

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent, Sonia Acosta (Ms. Acosta), was employed as a Correctional Officer by the R.J. Donovan Correctional Facility, California Department of Corrections and Rehabilitation (Donovan). By virtue of her employment, Ms. Acosta was a state safety member of CalPERS. Ms. Acosta submitted an application for Industrial Disability Retirement (IDR) based upon a claimed mental (anxiety, depression) condition. Staff reviewed relevant medical records and a written description of the usual and customary job duties of a Correctional Officer. Perry Maloff, M.D., a board-certified Psychiatrist, reviewed applicable reports, a written job description and evaluated Ms. Acosta as an Independent Medical Examiner (IME). Dr. Maloff prepared a written report which contained his observations, findings, conclusions, and ultimate opinion regarding Ms. Acosta's mental condition. Dr. Maloff opined that Ms. Acosta was not substantially incapacitated from performing her usual and customary duties as a Correctional Officer. Staff denied Ms. Acosta's application for IDR. Ms. Acosta appealed staff's determination and a hearing was held on January 27, 2014.

In order to be eligible for disability retirement, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the basis of the claimed disability must be permanent or of an extended and uncertain duration.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process handbook. CalPERS answered Respondent's questions, and provided her with information on how to obtain further information on the process.

The usual and customary duties of a Correctional Officer were established by the Administrative Law Judge (ALJ) receiving into evidence a written job description. Ms. Acosta also testified regarding her duties as a Correctional Officer.

Ms. Acosta did not call a physician witness to testify on her behalf at the hearing. Ms. Acosta did offer into evidence copies of medical records, which the ALJ reviewed and considered. Commenting upon such records, the ALJ stated:

"The records stated that she was ill and unable to attend work. They did not state that she was permanently disabled or incapacitated from performing the usual and customary duties of a Correctional Officer."

The ALJ also commented upon Ms. Acosta's testimony:

"Ms. Acosta's testimony, although heartfelt, did not constitute competent medical evidence. Her testimony was not corroborated

by any witness or by any expert. Moreover, the evidence introduced cast great doubt on Ms. Acosta's veracity and demonstrated that she tended to over exaggerate her condition and omit pertinent information. The reports documented that Ms. Acosta provided differing accounts of incidents to different treaters.

The evidence portrayed an individual who has been less than candid about her condition and other contributing factors with both her employer and her treaters."

The ALJ found that Dr. Maloff performed a lengthy review of medical records regarding Ms. Acosta and provided a thorough, detailed summary of those records in his written report. The ALJ commented upon Dr. Maloff's summary of the records, in relevant part, as follows:

"Those records confirmed that [Ms. Acosta] advised one of her treaters that she could perform her usual and customary duties if the alleged perpetrators of the sexual harassment were not within the workplace. Most importantly, those records contained information that conflicted with statements [Acosta] made to Dr. Maloff and also conflicted with statements she made to other treaters. The records raised significant doubts regarding [Acosta's] veracity."

In his report, Dr. Maloff concluded that Ms. Acosta did not suffer from any mental condition that would prevent her from returning to work as a Correctional Officer. Ms. Acosta told Dr. Maloff that she "harbored considerable anger" toward CDCR. This, in part, led Dr. Maloff to conclude that Ms. Acosta had an Axis II pathology or a personality disorder of "considerable drama, narcissism, [and] histrionic traits." However, Dr. Maloff also concluded that these personality traits were 'not long-term disabilities."

At the hearing, Dr. Maloff testified consistently with his report. The ALJ found that Dr. Maloff provided "competent, well-reasoned testimony" in support of his opinion that Ms. Acosta was not substantially incapacitated from performing the usual and customary duties of a Correctional Officer.

After considering all of the documentary evidence and testimony, the ALJ concluded that the competent medical evidence demonstrated that Ms. Acosta was not substantially incapacitated from performing the usual and customary duties of a Correctional Officer. Accordingly, the ALJ concluded that Ms. Acosta had not sustained her burden of proof and that the appeal must be denied.

The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

April 16, 2014


RORY J. COFFEY
Senior Staff Attorney