

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Andrew Castillo (respondent) was employed as a Correctional Officer by the California Department of Corrections and Rehabilitation (CDCR). By virtue of his employment, respondent was a state safety member of CalPERS. Respondent submitted an application for Industrial Disability Retirement (IDR) on the basis of claimed conditions of Valley Fever (coccidiomycosis), hypertension, reactive airway disorder (asthma), diabetes, hypertensive heart disease, sleep disorder, and depression. Staff reviewed relevant medical reports and a written description of the usual and customary job duties of a Correctional Officer. Respondent was evaluated by Samuel B. Rush, M.D., who is Board certified in Internal Medicine, and by Paul J. Markovitz, M.D., who is a Board-certified Psychiatrist. Both Dr. Rush and Dr. Markovitz prepared written reports which contained their findings, conclusions, and opinions. Both Dr. Rush and Dr. Markovitz expressed an opinion that respondent was not substantially incapacitated from performing the usual and customary duties of a Correctional Officer. Staff denied respondent's application for IDR. Respondent appealed staff's determination and a hearing was held on February 18, 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 for 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 his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process handbook. CalPERS answered respondent's questions, and provided him with information on how to obtain further information on the process.

The usual and customary job duties of a Correctional Officer were established on the basis of the Administrative Law Judge (ALJ) receiving into evidence a written job description, supplemented by the testimony of respondent.

Respondent testified that he contracted Valley Fever, a fungal infection of the lungs, in 2004 and again in 2006. In both instances, he was treated with medication and returned to work after approximately six months. Respondent testified that he had a third diagnosis of Valley Fever in 2008, but that was not documented in the medical reports received into evidence. Respondent testified that he experiences shortness of breath and that he cannot perform the usual and customary duties of a Correctional Officer.

Respondent did not call a physician witness to testify on his behalf at the hearing. Respondent did offer into evidence copies of medical reports, the contents of which the ALJ reviewed and considered. As part of a companion claim for Workers' Compensation benefits, respondent was examined by Timothy Reynolds, M.D. In a

June 2011 report, Dr. Reynolds wrote, in relevant part, “[Respondent’s] diabetes mellitus and his distant history of coccidioidomycosis [Valley Fever] probably require no work restrictions.” With regard to respondent’s cardiovascular condition, Dr. Reynolds noted the results of an EKG study as follows:

“An electrocardiogram revealed a normal sinus rhythm ..., normal intervals....This was an unremarkable electrocardiogram....”

Another diagnostic study (echocardiogram) was interpreted by Dr. Reynolds as “probably characteristic” of hypertensive heart disease, but not definitive. Dr. Reynolds’ findings and opinions regarding respondent’s condition were based largely on respondent’s subjective complaints of shortness of breath and fatigue.

In contrast, the ALJ reviewed and considered the contents of two written reports prepared by Dr. Rush, as well as Dr. Rush’s testimony at the hearing. With regard to pulmonary function, Dr. Rush noted that respondent had a dry cough at the time of the evaluation, but the cough could have been caused by many different factors, not just Valley Fever or asthma. Dr. Rush examined respondent’s chest and lungs and found, “...no chest wall tenderness. Lungs are clear to auscultation. Respiratory rate has not increased. Oxygen saturation as mentioned above was 99 percent. There was no wheezing, rhonchi, or rales.”

Dr. Rush found no evidence of hypertensive heart disease and found no support for such a diagnosis in the medical records he reviewed. Dr. Rush was familiar with EKG studies and had reviewed the report prepared by Dr. Reynolds, which referred to or summarized an EKG study performed in May 2011. Dr. Rush testified that the study showed “no significant abnormalities” and that the documented ejection fraction (a measurement of the amount of blood ejected with each heartbeat) was 64 percent, which is considered normal.

Dr. Rush testified that there was no evidence of disabling complications from respondent’s diabetes, such as kidney failure, peripheral neuropathy (nerve damage in the extremities) or severe hypertension. Respondent had first been diagnosed with diabetes in 1994 and clearly was able to perform the duties of a Correctional Officer with such diagnosis, even if the medical records showed that respondent’s diabetes was “poorly controlled” because of his persistent failure to take prescribed medication. At the hearing, Dr. Rush reviewed more recent medical reports, including a 2013 report from Timothy Albertson, M.D. Dr. Rush explained that hypertension or high blood pressure is often idiopathic (no definable cause) and that it is a multifactorial condition, meaning that it can be and is successfully treated by a combination of efforts, such as weight loss, diet, and medication. The medical record demonstrated that respondent did not consistently take medication prescribed for his hypertension. This fact was commented on by Dr. Albertson in the 2013 report, “I have stressed the importance of getting better control of his diabetes with diet, exercise, and medication compliance.”

Dr. Rush testified that respondent was not substantially incapacitated from performing the usual and customary duties of a Correctional Officer because of Valley Fever, reactive airway disorder or asthma, diabetes, hypertension, or hypertensive heart disease.

Dr. Markovitz testified that he was familiar with the usual and customary duties of a Correctional Officer. He described his interview with and mental status examination of respondent. He explained the significance of the results of the psychological testing that was part of his evaluation of respondent.

Dr. Markovitz found respondent to be "mildly depressed" at the time of his evaluation. Dr. Markovitz noted that respondent showed no signs of cognitive impairment, had reasonable concentration, abstract thinking and fund of knowledge. Dr. Markovitz felt that respondent's thoughts were focused on his claimed breathing problems and that respondent did not even refer to or discuss his claimed depression unless prompted by Dr. Markovitz.

Dr. Markovitz testified that respondent showed "unusual thought processes" in his psychological test results and in the mental status exam interview. Results from a standard MMPI test were inconsistent with respondent's presentation during the interview.

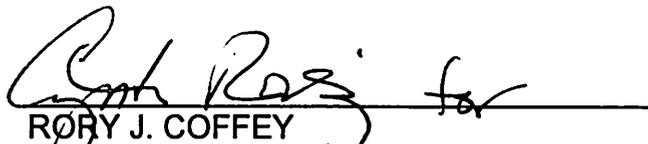
Dr. Markovitz noted that respondent acknowledged that he did not take antidepressant medication that had been prescribed and that poorly controlled diabetes could exacerbate symptoms of depression. These two factors alone indicated to Dr. Markovitz that, while he concluded that respondent was impaired because of depression at the time of the evaluation, such disability was not permanent. Dr. Markovitz stated in his report and testified at the hearing that respondent would be able to return to his duties as a Correctional Officer within six months, if he were to take prescribed antidepressant medication and take the medication prescribed for his diabetes and hypertension on a consistent basis.

After considering all of the documentary evidence and testimony, the ALJ found that the opinions of Dr. Rush and Dr. Markovitz were persuasive and that they should be given great weight. While Dr. Markovitz did find respondent mildly depressed at the time of his evaluation, the ALJ found that such condition was temporary and that respondent chose to not treat the depression. Accordingly, the ALJ found that respondent had not produced sufficient competent psychological evidence to support a finding in his favor. Likewise, the ALJ found that the weight of the evidence demonstrated that respondent was not substantially incapacitated by reason of any internal condition.

The ALJ concluded that respondent's appeal should 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



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Senior Staff Attorney