

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Juan Ruiz was employed by the California Department of Corrections and Rehabilitation (CDCR) as a Correctional Sergeant. By virtue of his employment, Respondent was a State safety member of CalPERS. Respondent submitted an application for service pending industrial disability retirement. The claimed basis for disability retirement was a cardiovascular condition. Respondent did service retire and has been receiving a service retirement benefit. Staff reviewed medical reports and a written description of Respondent's usual and customary duties. Stuart Fischer, M.D, is a Board-certified Cardiologist. Dr. Fischer reviewed medical reports, a written job description and performed an Independent Medical Examination (IME) of Respondent. Dr. Fischer prepared a written report, which contained his findings, observations, conclusions, and ultimate opinion. Dr. Fischer's opinion was that Respondent was not substantially incapacitated, on the basis of any cardiovascular condition, from performing the usual and customary duties of a Correctional Sergeant. Staff denied Respondent's application for industrial disability retirement. Respondent appealed staff's determination and a hearing was held on June 10, 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 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 clarified how to obtain further information on the process.

A copy of the CDCR job description/job requirements regarding the position of Correctional Sergeant was received by the Administrative Law Judge (ALJ) into evidence. Additionally, Respondent testified and described in greater detail what his usual and customary duties were.

Respondent testified that he suffered a heart attack in November 2010. He was hospitalized and received appropriate care, which included the placement of two stents into his right coronary artery, which had been blocked. Respondent returned to work, without restrictions, after approximately 30 days and continued working as a Correctional Sergeant for another 18 months.

Respondent testified that he was required to wear a protective vest while on duty and that the vest felt increasingly restrictive, causing him to experience, on occasion, shortness of breath. Respondent did not offer any written medical reports into evidence. Respondent did not call a physician to testify on his behalf at the hearing. Respondent acknowledged that no physician who had examined and/or treated him had

expressed an opinion that wearing a protective vest meant that he was not able to perform his usual and customary duties.

A copy of Dr. Fischer's written report was received by the ALJ into evidence. Dr. Fischer testified consistently with the contents of his written report. Dr. Fischer testified that, while Respondent had suffered a heart attack, it did not result in permanent damage to the heart muscle. Numerous diagnostic studies supported Dr. Fischer's opinion that Respondent was not precluded from performing the tasks of a Correctional Sergeant due to a cardiovascular condition. An echocardiogram study disclosed that Respondent's heart had an ejection fraction of 77%, which meant that the heart was functioning (pumping) normally.

After considering all of the documentary evidence and testimony, the ALJ found that Respondent had not presented any competent medical evidence in support of his claim that he was entitled to industrial disability retirement. To the contrary, the ALJ found that the competent medical evidence, including Dr. Fischer's written report and testimony, demonstrated that Respondent was not substantially incapacitated from performing the usual and customary duties of a Correctional Sergeant for CDCR. The ALJ concluded that Respondent's appeal should be denied. Pursuant to Government Code section 11517(c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends that the word "industrial" be inserted before the words "disability retirement" on pages one, two, five, and, seven of the Proposed Decision. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision, as modified.

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.

August 20, 2014



RORY J. COFFEY
Senior Staff Attorney