ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Valentin Sunico (Respondent) worked for the California Department of Corrections and Rehabilitation (CDCR) as a Correctional Officer. Due to his employment, Respondent is a state safety member of CalPERS. He filed an application for service pending industrial disability retirement claiming disability on the basis of a heart condition related to a heart attack. On his application, Respondent indicated that his heart condition did not limit or preclude him from activities, it did not affect his ability to perform his job and that he was currently working full time.

CalPERS staff reviewed medical reports regarding Respondent's heart condition and a written description of his usual and customary job duties. CalPERS retained Ajit Bhawan Raisinghani, M.D., a board-certified Cardiologist and Internist, to conduct an Independent Medical Examination. Dr. Raisinghani examined Respondent and reviewed medical records and a written job description. Based on his examination and records review, Dr. Raisinghani issued a report indicating that Respondent was not substantially incapacitated for performing the usual and customary duties of a Correctional Officer. Dr. Raisinghani noted that Respondent is asymptomatic from a cardiac standpoint, except for palpitations/atrial fibrillation. Dr. Raisinghani opined that Respondent is able to perform the job duties described for a Correctional Officer. With respect to Respondent's atrial fibrillation, Dr. Raisinghani indicated that it is well controlled. Therefore, he concluded that Respondent was not incapacitated from performing his job duties. As a result, CalPERS staff denied Respondent's application for industrial disability retirement. In response, Respondent submitted a timely appeal of staff's determination and a hearing was held to determine whether Respondent was substantially incapacitated from performance of his duties as a Correctional Officer.

To be eligible for industrial 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 claimed basis for the disability must be permanent or of an extended and uncertain duration.

The medical evidence presented by Respondent included two CalPERS physicians' reports on disability, one filled out by Cardiologist, Raghava R. Gollapudi, M.D., and the other by Internist, Alan T. Chang, M.D. Both doctors reviewed Respondent's job duties and the physical requirements of his position. Dr. Gollapudi indicated that Respondent was not substantially incapacitated from performing his usual duties. Dr. Chang opined that Respondent was substantially incapacitated based on restrictions he placed on Respondent with respect to running, squatting, climbing or lifting more than 50 pounds. Respondent also submitted a report from Dr. David Marsh, the Cardiologist who examined him for his workers' compensation injury. Dr. Marsh provided a disability rating under the workers' compensation guidelines; however he made no determination regarding Respondent's incapacity from a disability retirement standpoint.

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 indicated how to obtain further information on the process.

At the hearing, Respondent was present and represented himself. He testified about his employment as a Correctional Officer, and about medical records he produced. During his testimony, Respondent also discussed the treatment he received for his heart condition. Respondent testified that because he had undergone three stent placements and had a very stressful position as a Correctional Officer, he believed he qualified for industrial disability retirement.

In contrast to Respondent's testimony, Dr. Raisinghani testified at the hearing that Respondent did not advise him of any job duties he could not perform due to his heart condition. Dr. Raisinghani said that the medical records showed Respondent had been working for a number of years with his heart condition, and that with the treatment he received – placement of stents and medication – Respondent's heart condition is well controlled. Thus, according to Dr. Raisinghani, nothing about Respondent's heart condition should prevent him from performing his job duties, particularly since Dr. Raisinghani did not see any limitations on his examination of Respondent, nor documented in the medical records he reviewed. Dr. Raisinghani also stated that the placement of stents did not equate to an inability to perform the duties of his position.

Based on the testimony presented at the hearing and the evidence submitted by the parties, the Administrative Law Judge (ALJ) found that Respondent has not demonstrated through competent medical evidence that he is permanently incapacitated from performance of his duties as a Correctional Officer. Accordingly, after considering all of the medical evidence, the ALJ determined the most persuasive opinion was that of Dr. Raisinghani, who opined that Respondent is not substantially incapacitated from the duties of a Correctional Officer. Consequently, the ALJ denied Respondent's application for industrial disability retirement.

The Proposed Decision is consistent with the law and the facts. For the reasons stated above, staff argues that the Board should 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.

May 20, 2015

RENEE SALAZAR
Senior Staff Attorney