

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Robert Pacuinas (Respondent Pacuinas) was employed as a Traffic Officer by Respondent California Highway Patrol (CHP). By virtue of his employment, Respondent Pacuinas was a state safety member of CalPERS. In 2000, Respondent Pacuinas was approved to receive industrial disability retirement (IDR) on the basis of an orthopedic (lower back) condition. In 2011, Respondent was evaluated by Daniel D'Amico, M.D., a board certified Orthopedic Surgeon, for the purpose of determining whether Respondent Pacuinas continued to be substantially incapacitated from performing his former usual and customary duties as a Traffic Officer for CHP. Dr. D'Amico issued two reports in which he expressed his opinion that Respondent Pacuinas was not substantially incapacitated and could be reinstated to his former position with CHP. By letter dated January 19, 2012, CalPERS staff informed Respondent Pacuinas that CalPERS staff had determined that he was no longer substantially incapacitated and should be reinstated to his position with CHP. CHP was similarly advised of staff's determination. Both Respondent Pacuinas and CHP were provided with appeal rights.

On January 22, 2012, Respondent Pacuinas was involved in an automobile accident wherein his vehicle was struck from behind by another vehicle travelling at an estimated 20 mph. Respondent was transported from the scene of the accident to a hospital and received emergency care in connection with complaints of lower back pain.

CHP, in response to being advised of the CalPERS determination regarding Respondent Pacuinas, sought to institute its own reinstatement procedures. CHP wrote to Respondent Pacuinas and advised him that CHP required him to take and successfully complete a Physical Performance Program Test (PPPT). In order to even take the PPPT, CHP required Respondent Pacuinas' primary care physician to certify that Respondent Pacuinas was physically fit enough to safely take and complete the PPPT. Respondent Pacuinas' primary care physician, Stacey Nakano, M.D., stated that, in his opinion, Respondent Pacuinas could not safely take and complete the PPPT because of the condition of his lower back.

CHP appealed staff's determination. A hearing was held on June 9, 2015.

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

Since the reevaluation of Respondent Pacuinas was involuntary, done pursuant to the provisions of Government Code section 21192, the burden of proof at the hearing to demonstrate, on the basis of competent medical evidence, that Respondent Pacuinas was no longer substantially incapacitated and therefore no longer entitled to receive IDR benefits, was with CalPERS. CalPERS' independent medical examiner, Dr. D'Amico, was unavailable and could not appear at the hearing. Dr. D'Amico's written reports

were admitted into evidence as administrative hearsay. However, such administrative hearsay evidence was insufficient to satisfy the burden of proving that Respondent Pacuinas was no longer substantially incapacitated.

The administrative law judge (ALJ) also considered evidence from John Champlin, M.D., a physician witness retained by CHP. Dr. Champlin's opinion was that Respondent Pacuinas remains substantially incapacitated and cannot perform all of the 14 critical tasks required of all CHP Traffic Officers.

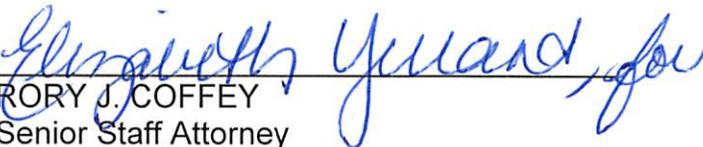
After considering all of the evidence, the ALJ ruled that CalPERS had not sustained its burden of proof. The ALJ concluded that CHP's appeal should be granted.

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 inserting the word "Involuntary Reinstatement" before the words "Industrial Disability Retirement" in the Proposed Decision." In addition the "Order" section should be amended to reflect that CHP, not Respondent Pacuinas, appealed CalPERS' determination and should read: "Respondent, California Highway Patrol's appeal from CalPERS' determination that Respondent Pacuinas is no longer disabled or incapacitated from performance of his usual duties as a Traffic Officer for the California Highway Patrol is GRANTED. The request of California Public Employees' Retirement System to involuntarily reinstate respondent Robert C. Pacuinas from Disability is Denied."

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

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 19, 2015


RORY J. COFFEY
Senior Staff Attorney