ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Timoteo Cruz (Respondent Cruz) was employed by the Department of Corrections and Rehabilitation, Calipatria State Prison, as a Correctional Officer, and is a safety member of CalPERS.

Respondent Cruz submitted an application for Industrial Disability Retirement (IDR) on the basis of psychological (major depression, psyche and headaches, post-traumatic stress symptoms) and cardiovascular (heart and hypertension) conditions.

CalPERS reviewed written descriptions of Respondent Cruz's job duties and relevant medical reports submitted by Respondent Cruz. CalPERS also sent Respondent Cruz for Independent Medical Examinations with Cardiologist Ajit Raisinghani, M.D., and Psychiatrist John Otis, M.D. Dr. Otis opined that Respondent Cruz was substantially incapacitated from performing his duties based on his psychological condition. Dr. Raisinghani, however, opined Respondent Cruz was not substantially incapacitated from performing his usual and customary job duties based on his cardiovascular conditions.

Based on relevant medical evidence, CalPERS determined Respondent Cruz was substantially incapacitated from performance of his duties as a Correctional Officer based on his psychological condition only. Accordingly, Respondent Cruz was approved only for disability retirement (and not IDR) based on psychological (major depression, psyche and headaches, post-traumatic stress symptoms) conditions effective January 1, 2010, and has been receiving his disability retirement benefits from that date.

Respondent Cruz appealed CalPERS' determination with regard to his application for IDR and a hearing as to whether Respondent Cruz is substantially incapacitated from performing his usual and customary job duties based on his cardiovascular condition was held on August 6, 2015.

To be eligible for disability retirement, competent medical evidence must demonstrate the member is substantially incapacitated from performing the usual and customary duties of his position. Furthermore, the injury and condition that is the basis for the claimed disability must be permanent or of an extended and uncertain duration. To be eligible for IDR, the death or disability must have been the result of injury or disease arising out of and in the course of employment. (Gov. Code section 20046.)

Respondent Cruz was represented by counsel. Respondent Cruz testified at the hearing regarding his job duties and his inability to perform his usual and customary job duties due to his heart condition. Respondent Cruz testified concerning his medical conditions and the medications he is prescribed due to the medical conditions. Respondent Cruz offered further medical reports from his treating physicians to substantiate his claims.

Dr. Raisinghani testified regarding his examination of Respondent Cruz and the diagnosis. Dr. Raisinghani opined that Respondent Cruz was not restricted from performing any job functions from a cardiovascular point of view.

The ALJ concluded that Respondent Cruz'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.

October 21, 2015.

PREET KAUR
Staff Attorney