

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent John Decker (Respondent) was employed as a Community Program Specialist I (CPS I) by Respondent California State Council on Developmental Disabilities (Council). By virtue of his employment, Respondent was a State miscellaneous member of CalPERS. In September 2013, the Council submitted to CalPERS an application for disability retirement on behalf of Respondent. The claimed basis for disability retirement was a psychological condition, although the Council did not specifically identify the disability that it claimed Respondent had, or how the claimed disability prevented him from performing the usual and customary duties of the CPS I position. Respondent did not request disability retirement and disagreed with the Council's claim that he was disabled.

CalPERS' staff reviewed relevant medical reports and a written job description for the CPS I position. Lawrence Warick, M.D., a Board-certified Psychiatrist reviewed medical reports and a written job description and performed an evaluation (mental status examination) of Respondent. Dr. Warick prepared a written report which contained his observations, findings, and conclusions. Dr. Warick expressed his opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of his CPS I position on the basis of any psychological condition or mental illness. CalPERS determined that Respondent was not eligible for disability retirement and provided notice of its determination to both Respondent and the Council. The Council appealed Staff's determination to deny the application for disability retirement and a hearing was held on August 19, and October 7, 2015.

Prior to and throughout the hearing the Council was represented by an attorney. Prior to the hearing, CalPERS explained the hearing process to the Council's attorney and the need to support their case with witnesses and documents. CalPERS provided the Council's attorney with a copy of the administrative hearing process pamphlet. CalPERS answered the Council's attorney's questions and clarified how to obtain further information on the process.

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

Respondent was present during the hearing. However, Respondent felt that it was not necessary for him to testify and relied upon the evidence and testimony presented by CalPERS in support of the denial of the Council's application for disability retirement.

The Council called a number of individuals who had supervised Respondent. These supervisors described various incidents wherein they experienced conflict with Respondent in the performance of his duties. However, the Administrative Law Judge (ALJ) noted that Respondent had been hired by the Council in 1998 and that there was no evidence of any job performance issues prior to 2008. The evidence was that a new Area Supervisor was hired in 2010 and that Respondent and the Area Supervisor had a "rough start" and that the situation did not improve. The Council presented evidence of Informal and Formal Reprimands that it issued to Respondent. In July 2013, the

Council placed Respondent on paid administrative leave and scheduled him for a Fitness-For-Duty examination.

Christopher Thompson, M.D., a Board-certified psychiatrist, performed a Fitness-For-Duty examination of Respondent. Dr. Thompson's conclusion was that Respondent was not able to perform the essential functions of his job.

Dr. Thompson's written report was received into evidence and Dr. Thompson testified at the hearing. According to Dr. Thompson, at the time of his evaluation, Respondent's mood was "good", he did not appear sad or anxious, his thinking was clear, coherent, and easy to understand, and he did not appear suspicious or paranoid. Dr. Thompson did not conduct any diagnostic tests. Based largely upon information gathered in interviews with Respondent's co-workers, Dr. Thompson concluded that Respondent had difficulty maintaining interpersonal relationships in the workplace.

Significantly, Dr. Thompson admitted that, for purposes of making a valid psychiatric diagnosis, he and other psychiatrists rely upon the criteria set forth in the Diagnostic and Statistical Manual (DSM). The DSM IV – TR provides criteria for both an Axis I (major psychiatric disorder or mental illness) diagnosis and an Axis II (personality disorder or intellectual deficit) diagnosis. Dr. Thompson admitted that Respondent "did not display sufficient signs or symptoms to have a diagnosis on Axis I." And, Dr. Thompson also admitted that, while Respondent showed some "signs of a disorder that could have otherwise supported an Axis II diagnosis, [Respondent] did not satisfy the minimum number of criteria required to make that diagnosis."

Dr. Thompson agreed that being a 'difficult' employee from an employer's perspective does not, alone, necessarily make an employee disabled from performing his or her job duties. (See. Factual Finding No. 36.)

The ALJ received into evidence and considered the contents of Dr. Warick's written report. Dr. Warick testified at the hearing. Dr. Warick was familiar with the CalPERS standard for disability retirement. As part of his evaluation of Respondent, Dr. Warick had Respondent complete an 18 page questionnaire. Dr. Warick also administered a standard diagnostic test, the Millon Clinical Multiaxial Inventory – III (MCMI III). The ALJ summarized Dr. Warick's observations and findings as follows:

Dr. Warick described [Respondent] as 'friendly and cooperative, somewhat controlling and verbose.' He found that [Respondent] was 'very articulate and expressed himself well.' [Respondent] 'did not show any overt signs of clinical depression' and his 'affect was appropriate at all times during the examination.' Dr. Warick determined that [Respondent's] 'social judgment was grossly intact.' He stated that [Respondent] 'is actively involved with his family, going to concerts, going to the movies and out to dinner, and volunteering at the VA hospital. He is living a perfectly normal life.' Dr. Warick reported that the MCMI – III confirmed his clinical impression that there is no Axis I diagnosis from a psychiatric point of view. On Axis II again it confirms [his]

clinical impression of a narcissistic, histrionic personality disorder....
(See Factual Finding No. 41.)

Dr. Warick's opinion was that Respondent was not substantially incapacitated from performing his usual and customary duties as a CPS I for the Council. He "testified that the Axis II diagnosis of a personality disorder may indicate problems in adapting, but it is not disabling."

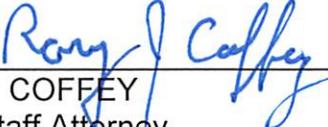
After considering all of the testimony and evidence, the ALJ concluded:

It is determined that Dr. Warick's opinion that [Respondent] is not permanently disabled or substantially incapacitated from the performance of his duties as a CPS I as a result of a psychological condition carries more weight than Dr. Thompson's. At most, the evidence presented at hearing demonstrated that [Respondent] was dissatisfied with certain aspects of his job, he was a challenging employee to supervise, he had less than satisfactory interpersonal relationships with one or more supervisors, and he was not performing up to the expectations of his supervisors. Although, as testified to by Dr. Warick, [Respondent] may have some personality traits that make his interactions with others more difficult, those personality traits do not render him permanently disabled or substantially incapacitated from the performance of his duties under the PERL statutes and regulations governing involuntary disability retirement. State Council failed to demonstrate by a preponderance of the evidence, including competent medical evidence, that [Respondent] is psychologically incapacitated from the performance of his duties as a CPS I.
(See Legal Conclusion No. 13.)

The ALJ concluded that the appeal by the Council 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 Council may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

December 16, 2015



RORY J. COFFEY
Senior Staff Attorney