

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent William Johnson (Respondent) was employed by Respondent California Department of Corrections and Rehabilitation, California Institution for Men (CDCR) as a Correctional Officer. By virtue of his employment, Respondent was a state safety member of CalPERS. Respondent submitted an application for industrial disability retirement (IDR) on the basis of a claimed psychological condition (generalized anxiety disorder, pain disorder due to physical and emotional stressors). CalPERS staff reviewed applicable medical reports and a written description of the usual and customary duties of a correctional officer. Perry Maloff, M.D., a Board-certified Psychiatrist, reviewed applicable medical reports, a written job description and performed an independent evaluation of Respondent. Dr. Maloff prepared a written report which contained his observations, findings, and conclusions, including his opinion that Respondent was not substantially incapacitated, on the basis of any active psychological condition, from performing the usual and customary duties of a Correctional Officer for CDCR. CalPERS staff denied Respondent's application for industrial disability retirement. Respondent appealed CalPERS' determination that he was not substantially incapacitated from performing the usual and customary duties of a Correctional Officer. A hearing was held before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings on December 3, 2015.

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 pamphlet. CalPERS answered Respondent'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 the individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

Respondent testified at the hearing, describing his largely successful career as a Correctional Officer with CDCR. Between 1990 and 2005, Respondent worked in assignments or shifts that placed him in direct contact with inmates. During this time Respondent was also called upon by supervisors to work overtime, oftentimes without notice. Respondent did not like this aspect of his position.

In 2005 Respondent was transferred to a position working in the gun tower. This resulted in Respondent no longer having direct contact with inmates and no longer having to work an unscheduled overtime shift.

In 2010 Respondent was ordered by his supervisor to work an overtime shift. Respondent objected to the request. In 2011 Respondent received Notice of an Adverse Action from CDCR based upon his refusal to work an overtime shift.

Respondent challenged the adverse action and the matter was resolved between Respondent and CDCR. However, the warden of the facility where Respondent worked, the California Institution for Men, removed Respondent from his position working in the gun tower and Respondent was ordered to return to working shifts in the general inmate population. The ALJ summarized Respondent's response to the warden's actions:

Respondent reacted adversely to the reassignment. He felt humiliated. Respondent developed symptoms consistent with adjustment disorder with anxiety and depression....He never returned to work after March 2011.
(See Factual Findings No.s 8 & 9.)

Respondent did not call a physician, psychiatrist, psychologist, or other health care professional to testify on his behalf at the hearing. Respondent did not offer into evidence copies of medical or psychological reports in support of his claim for disability retirement.

Dr. Maloff's "lengthy report" (ALJ's description) was received into evidence and its contents reviewed and considered by the ALJ. Dr. Maloff also testified at the hearing. In Factual Finding No. 13 the ALJ summarized Dr. Maloff's findings and opinion as follows:

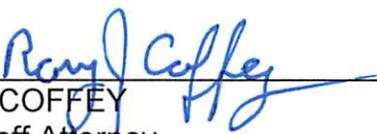
Dr. Maloff reviewed respondent's application for disability retirement. The application cited a generalized anxiety disorder as one of respondent's disabilities. Dr. Maloff disagreed. He pointed out that there was a big difference between having symptoms of anxiety and having the disorder. There were far more criteria that had to be satisfied before a diagnosis of anxiety could be established. He found that respondent had no history consistent with that diagnosis. He pointed out that there were no symptoms before February 2011. Respondent's other claimed basis for disability was a pain disorder due to association with physical and emotional stressors. Again, Dr. Maloff found no evidence of this condition. He noted that the diagnosis required subjective complaints of pain without objective findings to support them. He pointed out that there were no medical findings and no proper analysis in any of the medical reports to support that diagnosis. In Dr. Maloff's opinion, there was no evidence to support a valid diagnosis of any mental illness that would render respondent incapacitated for the performance of his duties as a correctional officer. He recognized that respondent had been through some difficulties after the personnel action that changed his life, and he experienced anxiety, worry, sadness, and concerns about his ability to go back to work. In Dr. Maloff's view, that constituted an adjustment disorder that typically resolves within six months. It was not a chronic problem....

After considering all of the evidence and testimony, the ALJ found that Respondent "failed to establish that he is substantially incapacitated for the performance of his job as a Correctional Officer... ."

The ALJ concluded that Respondent'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.

February 18, 2016



RORY J. COFFEY
Senior Staff Attorney