

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Brent Johnston (Respondent) was employed by the California Department of State Hospitals, Atascadero State Hospital (ASH) as a Psychiatric Technician. By virtue of his employment, Respondent was a state safety member of CalPERS. Respondent submitted an application for Industrial Disability Retirement on the basis of a claimed orthopedic (thoracic spine) injury or condition. Staff reviewed written medical reports and a written job description regarding Respondent. Brendan McAdams, Jr., M.D., a board-certified Orthopedic Surgeon, reviewed relevant medical reports, a written job description, and performed an independent medical examination of Respondent. Dr. McAdams prepared a written report which contained his observations, findings, and conclusions regarding his evaluation of Respondent. Dr. McAdams expressed his opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of a Psychiatric Technician because of any orthopedic injury or condition. CalPERS staff denied Respondent's application for Industrial Disability Retirement. Respondent appealed Staff's determination and a hearing was held on January 20, 2016.

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

Respondent did not appear at the hearing. The Administrative Law Judge (ALJ) found that Respondent had received proper and adequate notice of the hearing, both from CalPERS staff and the Office of Administrative Hearings (OAH).

The ALJ received into evidence and considered the contents of the written report prepared by Dr. McAdams. Dr. McAdams testified at the hearing, consistently with the matters set forth in his written report. Dr. McAdams' ultimate opinion was that there was a lack of evidence to support Respondent's claims and that Respondent was not substantially incapacitated from performing the usual and customary duties of a Psychiatric Technician for ASH.

After considering the evidence and testimony, the ALJ concluded as follows:

A qualified physician concluded, after examining Respondent, that he is not disabled from the usual duties of a psychiatric technician at Atascadero SH. There is no reason to doubt the credibility of Dr. McAdams, given his years of experience. Without positive medical evidence and opinion in his favor, Respondent cannot carry his burden of proving he is substantially disabled and eligible for retirement disability. His claim for disability retirement must therefore be denied.
(Legal Conclusion No. 5.)

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 adopted 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.

April 20, 2016



RORY J. COFFEY
Senior Staff Attorney