

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Daniel White (Respondent White) served as Chief of Racing for Respondent 21st District Agricultural Association (Respondent District). By virtue of his employment, Respondent White was a state miscellaneous member of CalPERS.

Respondent White applied for disability retirement with CalPERS on the basis of psychological (stress, anxiety, depression) conditions. CalPERS referred Respondent White for an Independent Medical Examination (IME) with Doctor Thomas Callahan, a board-certified psychologist. Dr. Callahan issued a written report finding Respondent White was able to perform the duties of Chief of Racing for Respondent District. On the basis of the IME report, and a review of Respondent White's medical and employment records, CalPERS denied Respondent White's disability retirement application.

Respondent White appealed CalPERS' determination. A one-day hearing was held in Fresno, California on February 23, 2016. Counsel appeared on behalf of CalPERS and Respondent White. Respondent District did not appear.

Pursuant to the California Public Employees' Retirement Law (PERL), a CalPERS member who is incapacitated from the performance of his or his duties shall be retired for disability. (Cal. Gov. Code §21150(a).) The statute has been interpreted and applied to require a showing of substantial inability to perform the usual duties of the job. (See, e.g., *Mansperger v. Public Employees Retirement System* (1970) 6 Cal.App.3d 873, 876.) On-the-job discomfort does not qualify a member for disability retirement; risk of further or future injury is similarly insufficient. (*Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 862-64.) On appeal, it is the member's burden to prove substantial incapacity. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.)

At hearing, CalPERS presented the oral testimony and written IME report of Dr. Callahan. Dr. Callahan testified that he interviewed Respondent White, obtained a personal and medical history, conducted a mental status examination and reviewed Respondent White's medical and work records. Respondent White told Dr. Callahan he was bullied by his former Chief Executive Officer supervisor and that his treating physician diagnosed him with Post Traumatic Stress Disorder (PTSD). He claimed to be unable to work under the CEO.

Dr. Callahan referred Respondent White for further examination by Dr. Errol Leifer, a psychiatrist. Dr. Leifer performed a Minnesota Multiphasic Personality Inventory or MMPI on Respondent White. The MMPI test, according to Dr. Callahan, assesses personality traits and psychopathology. Dr. Leifer found Respondent White's test results revealed "a clear conscious intention to exaggerate and look impaired."

At hearing, Dr. Callahan testified that PTSD was not a credible diagnosis for Respondent White. Dr. Callahan testified that mental health physicians abide by the

Diagnostic Statistical Manual (DSM) when making a diagnosis. According to DSM-IV, the manual applicable to Respondent White's application, no PTSD diagnosis can be made unless the patient experienced, witnessed or was confronted with actual or threatened death or serious injury (Criterion A). Dr. Callahan testified that workplace bullying, allegedly experienced by Respondent White, did not meet criterion A, and thus could not be the basis for PTSD.

Respondent White's treating physician, Dr. Sherry M. Walling, also testified at hearing. She disagreed with Dr. Callahan's diagnosis and testified that workplace bullying can be a form of cumulative trauma that can constitute a serious threat of injury. Dr. Walling also testified that an MMPI assessment, by itself, does not prove a patient is exaggerating. Respondent White did not testify at hearing.

The Administrative Law Judge (ALJ) considered all the evidence, and agreed with Dr. Callahan, finding that "respondent's humiliation at work, regardless of how distressful, did not meet Criterion A" of PTSD as set forth in DSM-IV. Rejecting Dr. Walling's testimony and attempt to expand PTSD to include workplace bullying, the ALJ held "[t]he experiences of our brave military personnel in wartime situations is far different than the experiences related by respondent in his workplace."

The ALJ concluded that Respondent White's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopts 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.

May 18, 2016



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