

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Theodore Parrish (Respondent), was employed as a Correctional Officer by Respondent Ironwood State Prison, California Department of Corrections and Rehabilitation (CDCR). By virtue of his employment, Respondent was a state safety member of CalPERS. Respondent applied for Industrial Disability Retirement (IDR) on the basis of a claimed psychological (post-traumatic stress disorder/PTSD) condition. In 2011, CalPERS' staff (Staff) approved Respondent's application for IDR. In 2013, Respondent was reevaluated for the purpose of determining whether he was still substantially incapacitated from performing the usual and customary duties of a Correctional Officer for CDCR. Lawrence Warick, M.D., a board-certified Psychiatrist, reviewed medical records and performed an independent psychological evaluation of Respondent. Dr. Warick prepared a written report in which he stated his opinion that Respondent was no longer substantially incapacitated from performing the usual and customary duties of a Correctional Officer because of an active psychological condition. Staff determined that Respondent was no longer disabled and Staff advised Respondent and CDCR that Respondent should be reinstated to his former position as a Correctional Officer. Respondent appealed Staff's determination and a hearing was held on August 17, 2016.

Respondent was represented by counsel during the appeal and at the time of the administrative hearing.

In order to be eligible for IDR, 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. Correspondingly, in order for an individual to be found ineligible for continued receipt of a previously approved disability retirement, competent medical evidence must demonstrate that he or she is no longer substantially incapacitated from performing the usual and customary duties of their former position.

At the hearing, Respondent's treating Psychiatrist, Stephen Signer, M.D., testified regarding his evaluation, diagnoses, and treatment of Respondent Parrish. Dr. Signer is a board-certified Psychiatrist. The Administrative Law Judge (ALJ) gave great weight to the contents of Dr. Signer's written reports/records and to his testimony at the hearing. The ALJ noted that, in 2011, Dr. Signer had completed a CalPERS Physician's Report on Disability, diagnosing Respondent with PTSD, offering an opinion that Respondent was substantially incapacitated from performing the usual and customary duties of a Correctional Officer and stating that the incapacity was permanent. The ALJ also noted that, "CalPERS relied upon Dr. Signer's opinions and diagnoses in rendering its decision [approval for IDR] and did not send [Respondent] for any additional evaluations." (See Factual Finding No. 5.)

After devoting almost six pages of the Proposed Decision to a review/summary of Dr. Signer's records/reports regarding Respondent Parrish between 2010 and 2014 (See factual Findings No.s 10 – 32), the ALJ concluded as follows:

The competent medical evidence and other available information established by a preponderance of the evidence that [Respondent] remains substantially incapacitated from performing the customary and usual duties required of a correctional officer. ...Dr. Signer's opinion is given great weight. He has been [Respondent's] treating physician since 2010. ...His diagnosis of post-traumatic stress disorder was supported by his records, as well as the opinions of other providers.... (See Legal Conclusion No. 12.)

The ALJ did review and consider the written report prepared by Dr. Warick and his testimony at the hearing. (See Factual Findings No.s 34 – 35.) However, the ALJ did not give Dr. Warick's testimony or opinion much weight.

The ALJ concluded that Respondent's appeal should be granted. 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. Since the Proposed Decision is in his favor, the member is unlikely to file a Writ Petition in Superior Court, if the Decision of the Board is to adopt the Proposed Decision.

November 16, 2016



RORY J. COFFEY
Senior Staff Attorney