

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO REMAND THE PROPOSED DECISION ON REMAND

Respondent James Greer (Respondent) applied for industrial disability retirement based on several conditions including a psychological condition. By virtue of his employment as a Youth Correctional Counselor (YCC) for Respondent Preston Youth Correctional Facility, California Department of Corrections and Rehabilitation (Respondent CDCR), he was a state safety member of CalPERS. CalPERS determined that Respondent was not disabled, and Respondent appealed.

This matter was heard on remand from the Board of Administration, California Public Employees' Retirement System. The matter originally proceeded to hearing on July 21, 2016. The Administrative Law Judge (ALJ) at the original hearing issued his Proposed Decision on August 1, 2016, denying Respondent's application for industrial disability retirement based on orthopedic, cardiovascular and neurological conditions. However, no evidence regarding claimed psychological conditions was presented at this hearing. Therefore, no findings were made as to whether the Respondent was substantially incapacitated on that basis.

On October 5, 2016, CalPERS' notified the Office of Administrative Hearings that the Board of Administration remanded the matter to the Office of Administrative Hearings for the taking of further evidence on one limited issue. Specifically, "[t]he Board requested that the ALJ receive and consider additional evidence regarding the psychological conditions and related limitations asserted by the member." The other issues adjudicated in the original Proposed Decision were not addressed in the hearing on Remand. The Remand hearing was completed on January 24, 2017 and the Proposed Decision on Remand was issued on March 2, 2017, denying Respondent's appeal on the basis that he was not substantially incapacitated based on a psychological condition.

Prior to the original hearing, CalPERS sent a letter to the Respondent which explained the hearing process 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.

As part of CalPERS' review of his medical condition, Respondent was referred for an Independent Medical Examination (IME) to board-certified Psychiatrist and Neurologist Dr. Michael Barnett, M.D., who interviewed Respondent, took his work history, and reviewed his job descriptions, medical records, diagnostic studies and surgical records. He also performed a comprehensive IME examination and prepared an IME Report.

Dr. Barnett determined that Respondent's mood was intermittently depressed, but generally described him as "bright, happy, talkative, alert, somewhat sad about his inability to work, the loss of his wife and his physical problems." Dr. Barnett found Respondent enjoyed "a good level of functioning." Dr. Barnett found no significant psychiatric illness. He acknowledged Respondent suffered from situational depression

brought on by his physical condition and losing his mother, coupled with raising two sons after a divorce. Dr. Barnett explained that situational depression is different from clinical depression. Situational depression is a typical condition for many people with the stressors Respondent had at that time. However, situational depression passes and is not permanent. Dr. Barnett concluded that Respondent is not substantially incapacitated from performing his usual duties as a YCC due to a psychological condition.

Respondent argued that Dr. Barnett's IME was incomplete, and asserted that the nature of the job as YCC was so stressful in and of itself that he could not continue to work in that field.

The ALJ found Respondent's arguments unpersuasive. The ALJ found that Dr. Barnett persuasively testified concerning Respondent's medical history, exam and diagnosis. The ALJ found that Respondent bears the burden of proof to offer sufficient competent medical evidence to support his industrial disability retirement application. Respondent submitted no competent medical evidence in support of his position, or from any medical provider that expressed an opinion inconsistent with Dr. Barnett's. In the absence of supporting medical evidence, the ALJ found that CalPERS properly denied Respondent's application for industrial disability retirement based on a psychological condition.

While the Proposed Decision on Remand addressed the Respondent's psychological conditions, it did not also incorporate the conclusions of the first ALJ that Respondent was not substantially incapacitated based on orthopedic, cardiovascular and neurological conditions. Thus, adopting only the Proposed Decision on Remand would not provide a complete resolution to this case. Therefore, staff argues that the Board again remand the Proposed Decision on Remand so that the separate conclusions of the first ALJ may be consolidated with the conclusions of the ALJ on remand, to produce one comprehensive Proposed Decision for review by the Board.

April 19, 2017


ELIZABETH YELLAND
Senior Staff Attorney