ATTACHMENT B

STAFF’S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Daniel Arevalo (Respondent) was employed by Respondent Department of State Hospitals Napa (Respondent DSH) as a Psychiatric Technician (Assistant)¹. By virtue of his employment, Respondent was a state safety member of CalPERS.

On February 12, 2013, Respondent submitted an application for industrial disability retirement on the basis of a psychological (PTSD) condition. Respondent’s application was approved by CalPERS and he retired effective February 14, 2013.

On July 19, 2017, CalPERS notified Respondent that CalPERS conducts reexamination of persons on disability retirement, and that he would be reevaluated for purposes of determining whether he remains substantially incapacitated and is entitled to continue to receive an industrial disability retirement.

In order to remain eligible for disability retirement, competent medical evidence must demonstrate that the individual remains substantially incapacitated from performing the usual and customary duties of his former position. The injury or condition which is the basis of the claimed disability must be permanent or of an extended duration which is expected to last at least 12 consecutive months or will result in death.

As part of CalPERS’ review of Respondent’s medical condition, Respondent was sent for an Independent Medical Examination (IME) to Robindra Paul, M.D., a board-certified Psychiatrist. Dr. Paul interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed medical records. Dr. Paul also performed a comprehensive IME. Dr. Paul opined that Respondent was not substantially incapacitated from the performance of his job duties. Dr. Paul believed Respondent was “malingering” in order to continue receiving benefits.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was no longer substantially incapacitated, was no longer eligible for industrial disability retirement, and should therefore be reinstated to his former position as a Psychiatric Technician (Assistant).

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. A hearing was held on June 12, 2019. Respondent represented himself at hearing. Due to Respondent DSH failure to appear, the hearing proceeded as a default under government code section 11520 as to that party only.

¹ CalPERS’ documents show Respondent was a Psychiatric Technician Assistant. Respondent asserted his job title was Psychiatric Technician, but no evidence regarding any distinction between the two positions was offered at hearing, and the distinction does not bear any significance to the decision.
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.

At the hearing, Dr. Paul testified in a manner consistent with his examination of Respondent and his IME Report. Dr. Paul’s medical opinion is that Respondent can perform the duties of his position and is therefore no longer substantially incapacitated.

Respondent testified on his own behalf. Respondent testified that his treating physicians “do not really know” how he feels, and it is hard for him to open up and trust anyone. He has trouble focusing, is under duress, has not had an easy time of it, and has had difficulty consulting with physicians. While he claimed to experience ongoing medical issues, Respondent admitted he has not sought medical attention since he was approved for disability. Respondent introduced various medical records, all of which were admitted as administrative hearsay. The ALJ agreed with Dr. Paul that Respondent’s medical records were inconsistent and contradictory, lending further credence to Dr. Paul’s opinions.

The ALJ found that the only competent medical evidence was presented by Dr. Paul which established that Respondent is no longer substantially incapacitated from performing his duties as a Psychiatric Technician (Assistant) for Respondent DSH.

After considering all of the evidence introduced as well as arguments by the parties at the hearing, the ALJ denied Respondent’s appeal. The ALJ found that CalPERS met its burden of proof. CalPERS established with competent medical evidence that Respondent is no longer substantially incapacitated from performing the usual and customary duties required of a Psychiatric Technician (Assistant). Respondent’s statements to Dr. Paul were contradicted by medical records, including a medical record documenting an appointment just two weeks before the hearing. The ALJ found the contradictions and inconsistencies cast doubt on Respondent’s claims regarding his claimed current condition and were not explained by his psychological condition.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to “make technical or other minor changes in the proposed decision.” Throughout the Proposed Decision, the ALJ refers to “Dr. Kumar”, when she should have referred to “Dr. Paul”. In order to avoid ambiguity, staff recommends that everywhere in the Proposed Decision the name “Kumar” be replaced with “Paul.”
For all the above reasons, staff argues that the Proposed Decision be adopted by the Board, as modified.

August 21, 2019.

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