

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Rudy Orozco (Respondent) worked as a Registered Nurse for Respondent California Institution for Men, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of his employment, Respondent was a state safety member of CalPERS.

Respondent filed an application for industrial disability retirement (IDR) on July 26, 2019, based on a cardiovascular condition.

As part of CalPERS' review of Respondent's medical condition, Robert Bernard Weber, M.D., who is board-certified in Internal Medicine and Cardiology, performed an Independent Medical Examination (IME). Dr. Weber interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints and reviewed his medical records. Dr. Weber opined that Respondent is not substantially incapacitated from performing his job as a Registered Nurse.

In order to be eligible for disability retirement, competent medical evidence must demonstrate that an 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 duration which is expected to last at least 12 consecutive months or will result in death.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent is not substantially incapacitated from performing the duties of his position.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on August 15, 2019. Respondent was represented by counsel at the hearing. Respondent CDCR did not appear at the hearing.

At the hearing, Dr. Weber testified in a manner consistent with his examination of Respondent and the IME report. Dr. Weber testified that his evaluation was limited to Respondent's cardiovascular condition and that he did not find any material relationship between Respondent's cardiovascular surgery and his ability to physically perform his job. Dr. Weber understood Respondent had a dissection of the aorta and a dissection of the right coronary artery which put him at risk for a heart attack. Based upon his knowledge of the surgery and condition following the surgery, Dr. Weber did not find any "intrinsic reason" why Respondent would be substantially incapacitated from performing his job duties. Dr. Weber distinguished between Respondent's abilities due to his obesity and any impaired ability due to his condition following his surgery.

Dr. Weber's medical opinion is that Respondent is not substantially incapacitated from performing his job based on a cardiovascular condition.

Respondent testified on his own behalf regarding his job duties and his limitations due to his cardiovascular condition. Respondent testified that he was assigned to Yard B, the most "difficult" yard. When he worked in Yard B, he was required to respond to emergencies between two to three times a night. Yard B was especially challenging because to access prisoners during their medical emergencies, Respondent was required to climb several flights of stairs with a "trauma bag" filled with heavy emergency equipment. He would then manually pull prisoners from their cells onto a stretcher and physically carry the stretcher down the same flights of stairs. Respondent testified that he was assisted by another Registered Nurse or officer only after the prisoner was placed on the stretcher.

Respondent also called his co-workers, Christine Jacinto and Cara Callahan, to testify on his behalf. Ms. Jacinto and Ms. Callahan corroborated Respondent's testimony regarding his job duties.

Respondent presented the testimony of Anthony Hilliard, M.D. as well as medical records from his treating physicians to support his appeal. Dr. Hilliard has been Respondent's treating cardiologist since November 4, 2016. Dr. Hilliard testified that he has never conducted an IME and was not familiar with the standards for determining whether an individual is disabled under the CalPERS disability statutes. Dr. Hilliard testified that Respondent's descending portion of his aorta is still torn. Dr. Hilliard concluded that Respondent was unable to continue to perform his required duties without risking a rapid rise in his blood pressure and adverse medical consequences due to any impairment in the "integrity" of the wrap placed in the ascending aorta and the progression of the "flap," in size or diameter, to the descending aorta. Dr. Hilliard acknowledged that Respondent is "capable" of lifting 20, 30 or even 50 pounds and to walk up two flights of stairs, but especially in a high-stress environment, doing these activities could lead to uncontrolled blood pressure.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent's appeal. The ALJ afforded greater weight to the testimony of Dr. Hilliard due to his knowledge of Respondent's condition, his treatment of him over time and his understanding and explanation of the surgery. The ALJ found Dr. Hilliard's analysis of Respondent's medical condition more persuasive particularly because he knew that Respondent's descending aorta was unrepaired intentionally, due to the risks of that procedure. Dr. Hilliard convincingly testified that Respondent's torn descending portion of his aorta presents additional challenges to Respondent's ability to perform his job duties. He echoed the surgeon's postsurgical note, which stated Respondent needed to avoid any situation that would lead to a rapid rise in his blood pressure, so that there is not further propagation or expansion of the descending dissection flap. After reviewing Respondent's job duties, and the frequency with which he had to perform these duties, Dr. Hilliard concluded that Respondent was not able to

continue to perform his required duties without risking a rapid rise in his blood pressure and adverse medical consequences. After evaluating the testimony of the two expert witnesses, the ALJ concluded that Respondent's disabilities are not remote or prophylactic because they directly affect his ability to effectively perform his responsibilities as an emergency provider. Therefore, the ALJ found that Respondent is eligible for disability retirement.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

December 18, 2019

Austa Wakily
Senior Attorney