

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Daniel F. Thompson (Respondent) was employed by Respondent California Department of Forestry and Fire Protection (CAL FIRE) as a Fire Fighter II. By virtue of his employment, Respondent was a state safety member of CalPERS. On or about July 21, 2017, Respondent submitted an application for industrial disability retirement on the basis of a psychological (Post-Traumatic Stress Disorder) condition. Respondent's application was approved by CalPERS and he retired effective August 28, 2017.

On December 3, 2018, CalPERS staff notified Respondent that CalPERS conducts reexamination of persons on disability retirement, and that he would be reevaluated, pursuant to Government Code section 21192, for the purpose 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 Alan L. Schneider, M.D., a board-certified Psychiatrist and Neurologist. Dr. Schneider interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed medical records. Dr. Schneider also performed a comprehensive IME. Dr. Schneider opined that Respondent is no longer substantially incapacitated from performing his duties as a Firefighter II. Dr. Schneider further opined that Respondent did not meet the criteria for the diagnosis of Post-Traumatic Stress Disorder (PTSD). Dr. Schneider stated that Respondent's alcohol use disorder needed to be analyzed prior to addressing Respondent's alleged job stressors. Dr. Schneider ultimately concluded that there were no specific duties that Respondent was unable to perform.

After reviewing all medical documentation and the IME report, 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 Fire Fighter II.

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 January 13, 2020. Respondent was represented by counsel at the hearing. Respondent CAL FIRE did not appear at the hearing.

Dr. Schneider, despite being under subpoena, failed to appear at the hearing. Dr. Schneider's IME report was introduced as administrative hearsay evidence.

Respondent testified on his own behalf. Respondent testified that he is still receiving treatment for his psychological condition. Respondent testified that he still experiences symptoms related to his psychological condition, including severe depression, anxiety, and sadness, and he relives the traumatic events he witnessed as a firefighter. Respondent testified that he wants to return to work but does not believe he could perform the duties of a Fire Fighter II. Respondent testified that he knows that his PTSD would be triggered if he were required to deal with medical emergency calls or respond to a traffic accident.

Respondent also called Dr. Andrew Jeremiah Levine to testify on his behalf. Dr. Levine is board-certified in the field of Clinical Neuropsychology. Dr. Levine testified that he agreed with Respondent's treating doctors that he suffers from PTSD. Dr. Levine testified that the many emergencies to which Respondent responded as a Fire Fighter II lead to the decline in his psychological status. Dr. Levine testified that if Respondent were required to return to work as a Fire Fighter II, his PTSD symptoms would worsen, and he would be unable to perform the job duties required of him.

At the hearing, Dr. Levine also testified that he disagreed with the results of Dr. Schneider's examination and report. Dr. Levine testified that alcohol use was not the cause of Respondent's psychological condition, but an attempt by Respondent to help numb or self-medicate his PTSD symptoms. Dr. Levine testified that individuals suffering from PTSD will often try to self-medicate as much as they can and will endure symptoms as much as they can until eventually the condition deteriorates and they fall apart.

Respondent also submitted medical records from his treating physicians to support his appeal.

The ALJ found that cause exists to grant Respondent's appeal. The ALJ found that CalPERS failed to establish, on the basis of competent medical evidence, that Respondent is no longer substantially incapacitated. In addition, the ALJ found that Dr. Levine credibly testified that Respondent was presently substantially incapacitated from performing his duties as a Fire Fighter II for CAL FIRE. Moreover, the ALJ found that Dr. Levine persuasively testified that Dr. Schneider's conclusions were faulty and not supported by Respondent's medical treatment.

After considering all of the evidence introduced as well as arguments by the parties at the hearing, the ALJ granted Respondent's appeal. The ALJ found that Respondent remains substantially incapacitated, and that CalPERS' determination should be reversed.

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

April 22, 2020

John Shipley
Senior Attorney