

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION AS MODIFIED

Respondent California Department of Fish and Wildlife (Respondent CDFW) applied for disability retirement on behalf of Respondent Christian A. Ladd (Respondent Ladd) and requested CalPERS determine whether Respondent Ladd was substantially incapacitated from performance of his duties. By virtue of his employment as an Information Technology Specialist I for Respondent CDFW, Respondent Ladd was a state miscellaneous member of CalPERS.

Respondent CDFW filed an employer-originated application for disability retirement on behalf of Respondent Ladd on April 6, 2018 based on hepatitis C, cirrhosis of the liver, jaundice, ecchymoses, peripheral edema, tremor, and history of bleeding esophageal varices conditions. Respondent Ladd filed an application for disability retirement on May 11, 2018 claiming he had no limitations or preclusions due to his "Gastro Internal" condition.

As part of CalPERS' review of Respondent Ladd's medical condition, Michael M. Bronshvag, M.D., a board-certified Internist, performed an Independent Medical Examination (IME). Dr. Bronshvag interviewed Respondent Ladd, reviewed his work history and job descriptions, obtained a history of his past and present complaints, reviewed his medical records, and performed a physical examination. Dr. Bronshvag opined that Respondent Ladd "does still have the structural abnormalities of liver disease-cirrhosis." He opined that Respondent Ladd could perform his full duties 4 hours per day without lifting and other exertions. Dr. Bronshvag further opined that Respondent Ladd is substantially incapacitated from performing his full job duties full time for another 6 to 12 months.

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 Ladd was substantially incapacitated from performing the duties of his position based on a gastrointestinal (cirrhosis) condition.

Respondent Ladd 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 September 26, 2019 and December 19, 2019. Respondent Ladd was represented by counsel at the hearing. Respondent CDFW appeared at the hearing.

Respondent CDFW called Perhom Sani, an Information Technology Supervisor II for Respondent CDFW and Respondent Ladd's last supervisor. Mr. Sani testified to the job duties and physical requirements of Respondent Ladd's position as an Information Technology Specialist I. Respondent CDFW also called Scott Anderson, M.D., Ph.D., to testify. Dr. Anderson testified in a manner consistent with his Fitness for Duty Evaluation of Respondent Ladd for Respondent CDFW and his reports, which were received into evidence. Dr. Anderson's medical opinion is that Respondent Ladd's condition is permanent because his liver is damaged, and he will have the chronic sequelae of cirrhosis. Dr. Anderson opined that Respondent Ladd is not fit for duty and is substantially incapacitated from the performance of his job duties.

Respondent Ladd testified on his own behalf that he is working part-time at Sherwin Williams and is responsible for picking up and delivering one-gallon cans and five-gallon buckets of paint weighing 50 pounds or more. Respondent Ladd also called his treating gastroenterologist, Nazir Rahim, M.D., to testify. Dr. Rahim testified to the history and treatment of Respondent Ladd's condition. Dr. Rahim's medical opinion is that Respondent Ladd's cirrhosis and overall liver condition had significantly improved and is sufficiently stable, and that Respondent Ladd could return to his usual job duties without restrictions. At the hearing, Dr. Rahim reiterated his opinion "without hesitation." Respondent submitted medical records from Dr. Rahim to support his appeal, which were received into evidence.

At the hearing, Dr. Bronshvag testified in a manner consistent with his examination of Respondent Ladd and the IME reports. Dr. Bronshvag's medical opinion is that Respondent Ladd's medical reports showed persistent liver damage and his labs were abnormal. Dr. Bronshvag's opinion at the time of the IME is that Respondent Ladd is unable to perform the full duties of his job full time for another 6 to 12 months. Therefore, Dr. Bronshvag's opinion is that Respondent is substantially incapacitated.

Copies of written job descriptions for the position of Information Technology Specialist I for Respondent CDFW were received into evidence and considered by the ALJ.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent Ladd's appeal. The ALJ found that Dr. Rahim's testimony was persuasive, and Respondent Ladd established that he was not substantially incapacitated from performance of his duties as an Information Technology Specialist I.

The ALJ concluded that Respondent Ladd is not eligible for disability retirement.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends correcting the definition for Government Code section 20026 from ". . . mean disability of permanent or extended and uncertain duration, as determined by the board . . . on the basis of competent medical opinion" to ". . . mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board . . . on the basis

of competent medical opinion” on page 18, in paragraph 3 of the Proposed Decision and deleting the words “and uncertain” before “duration” on page 20, in paragraph 8, line 2 of the Proposed Decision.

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

April 22, 2020

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Attorney