

ATTACHMENT B

STAFF'S ARGUMENT

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

Shane E. Griffeth (Respondent) was employed by Respondent Department of Substance Abuse Treatment Facility, California Department of Corrections and Rehabilitation (Respondent CDCR) as a Correctional Officer. By virtue of his employment, Respondent was a state safety member of CalPERS. On September 18, 2017, Respondent submitted an application for industrial disability retirement on the basis of orthopedic (right shoulder and back) conditions. Respondent's application was approved by CalPERS and he retired effective October 7, 2017.

In 2018, CalPERS staff 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 William P. Curran Jr., M.D., a board-certified Orthopedic Surgeon. Dr. Curran interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed medical records. Dr. Curran also performed a comprehensive physical examination. Dr. Curran opined that Respondent is not temporarily or permanently incapacitated from his job as a Correctional Officer and will be able to return to his job without restrictions.

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 Correctional Officer.

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 March 10, 2020. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing.

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.

Copies of written job descriptions for the position of Correctional Officer for Respondent CDCR were received into evidence and considered by the ALJ.

At the hearing, Dr. Curran testified in a manner consistent with his examination of Respondent and the reports prepared after the IME. During the lunch break, Dr. Curran reviewed additional medical reports newly provided by Respondent Griffith the day of the hearing. Based on his thorough review of the new reports, Dr. Curran's medical opinion changed and he testified that Respondent cannot perform the duties of his position and is therefore substantially incapacitated.

Respondent testified on his own behalf. Respondent testified about his medical conditions and limitations. At the hearing, Respondent also testified that he disagreed with the results of Dr. Curran's examination and report. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from his treating physicians to support his appeal.

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 the competent medical evidence presented by Dr. Curran established that Respondent is substantially incapacitated from performing his duties as a Correctional Officer for Respondent CDCR and therefore granted the appeal.

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 replacing "Kevin Riddle, Chief, Disability and Survival Benefits Division" with "Keith Riddle, Chief, Disability and Survivor Benefits Division" on page 2, in Proposed Decision paragraph 1 of the Proposed Decision, 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 15, in paragraph 2 of the Proposed Decision, and correcting the definition of disability from "disability of permanent or extended and uncertain duration. . . on the basis of competent medical opinion" to "disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death. . . on the basis of competent medical opinion" on page 20, in paragraph 10 of the Proposed Decision.

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

June 17, 2020

Helen L. Louie
Attorney