

ATTACHMENT B

STAFF'S ARGUMENT

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

Respondent California Highway Patrol (CHP) applied for disability retirement on behalf of Lloyd A. Getchell, Jr. (Respondent) on the basis of hip, hypertension, anxiety/depression, back and ankle conditions. Respondent applied for disability retirement based on right acetabulum fracture, fractured pelvis, low back injury, right hip, right thigh, right knee, right ankle and foot, numb right thigh, numb toes, nerve damage, severe pain standing, sitting and walking, brain injury due to Xanax withdrawal, memory problems, possible PTSD, high blood pressure, anxiety, migraine headaches, low body extremity (legs, back, right hip and leg), head injury (Jacksonian seizure) and Valley fever (lungs) conditions. By virtue of his employment as an Automotive Technician II for CHP, Respondent was a state miscellaneous member of CalPERS.

CHP filed an employer originated application for disability retirement on behalf of Respondent on or about February 8, 2018. Respondent filed an application for disability retirement on April 16, 2018.

As part of CalPERS' review of Respondent's medical condition, Robert K. Henrichsen, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Henrichsen interviewed Respondent, 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. Henrichsen opined that there are no specific job duties that Respondent is unable to perform due to a physical condition.

Alberto G. Lopez, M.D, a board-certified Psychiatrist, also performed an Independent Medical Examination (IME). Dr. Lopez, interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, reviewed his medical records, performed a Mental Status Examination, and performed psychological testing. Dr. Lopez opined that there are no specific job duties Respondent is unable to perform based on a psychiatric condition.

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 was not substantially incapacitated from performing the duties of his position on the basis of orthopedic (pelvis, low back, right thigh, right knee, right ankle,

and right foot) and psychiatric (Xanax withdrawal, memory problems, post-traumatic stress disorder, and anxiety) conditions.

Respondent appealed this determination and requested a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on June 24, 2020. Respondent did not appear at the hearing. CHP did not appear at the hearing.

At the hearing, the ALJ received documentary evidence demonstrating that CalPERS had provided both Respondent and CHP with proper notice of the date, time and place of the hearing. The ALJ found that the matter could proceed as a default against Respondent and CHP, pursuant to Government Code section 11520 (a).

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.

Copies of written job descriptions for the position of Automotive Technician II for CHP were received into evidence and considered by the ALJ.

At the hearing, Dr. Henrichsen testified in a manner consistent with his examination of Respondent and his IME reports. Dr. Henrichsen's medical opinion was that Respondent has a lot of symptoms, but his overall examination findings and imaging do not support his symptoms. Dr. Henrichsen found that Respondent had a healed acetabular fracture, arthritis of his hips, right knee tendon pain without abnormal objective findings, and a normal right ankle. He also found that Respondent had confusing toe numbness symptoms, unfavorable power to weight ratio, degenerative arthritis of his lumbar spine, minimal degenerative disc disease at L5-S1 and a short left leg. In addition, he found that Respondent's symptoms were poorly supported by objective findings. Dr. Henrichsen opined that Respondent had pelvis surgery and it does not limit him from working. In addition, he found that there was no objective evidence of limitations from performing his job due to his low back. Regarding Respondent's thigh numbness, Dr. Henrichsen opined that it does not limit him from working and Respondent demonstrated no pain in or around his thighs. Furthermore, Dr. Henrichsen opined Respondent's right knee patellar tendon does not limit him occupationally. Therefore, Dr. Henrichsen concluded that Respondent was not substantially incapacitated.

Dr. Lopez testified in a manner consistent with his examination of Respondent and his IME report. Dr. Lopez's medical opinion is that there are no specific job duties Respondent is unable to do based on a psychiatric condition. Dr. Lopez found that Respondent's medical records show that he has been diagnosed with anxiety and depression, but low levels, and his psychological test results suggest a dysthymic disorder, a lower level of depression. Furthermore, Dr. Lopez found that Respondent

did not seem to have been diagnosed with severe cognitive difficulties and he was cognitively intact at the time of his examination. Therefore, Dr. Lopez concluded that Respondent is not substantially incapacitated.

A CalPERS staff member testified about efforts made by staff to obtain even the most minimal medical documentation of Respondent's other alleged medical conditions. She noted that CalPERS staff sent letters and made phone calls to Respondent, requesting additional medical reports concerning his alleged migraines, Jacksonian seizures, high blood pressure, hypertension, Valley Fever, and orthopedic conditions. Despite these efforts, no additional medical records were sent to CalPERS substantiating in any way these other claimed medical conditions. Therefore, CalPERS did not have a basis for considering these other alleged conditions in its disability evaluation.

After considering all of the evidence introduced, the ALJ denied Respondent's appeal. The ALJ found as follows:

CalPERS presented competent medical evidence through the testimony and IME reports of Dr. Henrichsen and Dr. Lopez. Both experts found insufficient evidence to make a finding that respondent is substantially incapacitated from performing the duties of an Automotive Technician II. Their opinions were persuasive.

The ALJ concluded that Respondent and CHP failed to meet their burden of proof to present competent medical evidence to show that Respondent is substantially incapacitated from performance of his usual duties as an Automotive Technician II due to an orthopedic or psychiatric condition and, as a result, Respondent 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 of 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 6, paragraph 1 in the "Legal Conclusions" section of the Proposed Decision.

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

September 16, 2020

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Attorney