

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Todd D. Hopkins (Respondent) applied for industrial disability retirement based on cardiologic (heart, hypertension), internal (fatigue, sleep apnea) and otolaryngologic (hearing loss) conditions. By virtue of employment as a Correctional Officer (CO) for Respondent California Substance Abuse Treatment Facility and State Prison, Corcoran, California Department of Corrections (Respondent CDCR), Respondent was a state safety member of CalPERS.

Respondent filed an application for service pending industrial disability retirement on October 8, 2019, and has been receiving service benefits since that time.

As part of CalPERS' review of Respondent's medical condition, he was sent to three board-certified specialists. Dr. James Schmitz is board-certified in Internal Medicine with a subspecialty in Cardiovascular Diseases. Dr. Schmitz performed an Independent Medical Examination (IME) of Respondent, focusing on his cardiovascular condition. Dr. Schmitz interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Cardiac exam revealed "the apical impulse is nondisplaced. The first and second heart sounds are normal. There are no murmurs, rubs or gallops audible." While Dr. Schmitz recognized that Respondent has had treatment for common arrhythmia, "he has not experienced recurrent sustained arrhythmias and he would be considered discharged as cured from his arrhythmia." Dr. Schmitz opined "there is no level of substantial incapacity for the performance of his job as a Correctional Officer."

Dr. Raman Verma is board-certified in Internal Medicine. Dr. Verma performed an Independent Medical Examination (IME) of Respondent, focusing on his internal conditions (fatigue and sleep apnea). Dr. Verma interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Verma opined, "there is no reason that he cannot perform his job duties because his blood pressure is under good control, his heart functions are normal, and he is in normal sinus rhythm and not tachycardic." In addition, "he does not have any incapacitation from fatigue or sleep apnea, for which he has been using CPAP for 8 years and it is working fine." Finally, "I do not find any reason that this individual is not capable of performing his duties. Physically he is totally capable of performing all of the duties listed in his job description."

Dr. Donald Carter is board-certified in Otolaryngology. Dr. Carter performed an Independent Medical Examination (IME) of Respondent, focusing on his otolaryngologic (hearing loss) condition. Dr. Carter interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records including the IME reports by Drs. Schmitz and Verma. Dr. Carter stated, "I have some experience in certifications of law enforcement officers with hearing loss. My understanding is that a candidate can meet the rules by using

amplification to assist with hearing. Respondent was recommended to try hearing aids, but has not done so when I did his evaluation.” Dr. Carter opined that Respondent “has permanent hearing loss, but I feel it could be corrected well enough to perform his job and meet the job criteria with the use of hearing aids.” Thus, Dr. Carter found Respondent is not incapacitated due to his otolaryngology conditions.

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.

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 June 18, 2021. Respondent represented himself at 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.

At the hearing, all three IMEs testified in a manner consistent with their examination of Respondent and the conclusions in their IME reports. All three doctors’ medical opinion is that Respondent is not substantially incapacitated.

Respondent testified on his own behalf. Respondent did not call any physicians or other medical professionals to testify. Respondent recounted his 31 years of service as a CO at three different prisons, from 1988-2019. He believes his time as CO caused his hearing loss in 2006, and triggered his heart condition and sleep apnea in 2009. In 2019, he felt unable to do his job because of his health conditions. Respondent believes none of his health conditions have resolved. He still suffers from high blood pressure, palpitations, and the cumulative effects having led to fatigue and restless sleep. He uses a CPAP machine each night but is tired every morning. He has hearing loss but has not obtained hearing aids because they are expensive.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that Respondent had the burden of proof to show he was substantially incapacitated. He offered no medical evidence to support his alleged incapacity. The ALJ found the testimony of the three board-certified specialists to be consistent with each other, and consistent with Respondent’s prior

medical records. The opinions of the three specialists were based on objective medical findings, and not on Respondent's subjective complaints. The ALJ found that Respondent failed to establish through competent medical evidence, that he was substantially incapacitated to perform the usual duties of a CO based on cardiac (heart and hypertension), internal (fatigue and sleep apnea), and otolaryngologic condition (hearing loss) at the time he filed his application.

The ALJ concluded that Respondent is not eligible for industrial disability retirement because the evidence did not show he was substantially incapacitated from performance of his usual job duties as a CO for CDCR. Accordingly, the ALJ denied Respondent's appeal.

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

September 15, 2021.

Elizabeth Yelland
Senior Attorney