

ATTACHMENT B

STAFF'S ARGUMENT

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

Danilo B. Manlapaz (Respondent) filed an application for service pending disability retirement on November 3, 2016, based on internal (peripheral artery disease and venous insufficiency) and orthopedic (neck) conditions. By virtue of his employment as a Supervising Correctional Cook for Respondent California Rehabilitation Center, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS. He has been receiving service retirement benefits since December 1, 2016.

On November 23, 2016, Respondent amended his disability retirement application to an industrial disability retirement application. CalPERS requested medical reports from Respondent concerning the alleged conditions on his application.

Respondent's medical reports indicated a possible disability regarding his internal (peripheral artery disease and venous insufficiency) condition. Therefore, as part of CalPERS' review, Robert B. Weber, M.D., a board-certified Cardiologist and Internist, performed an Independent Medical Examination (IME). Dr. Weber 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. Weber opined that Respondent is not substantially incapacitated to perform his job duties.

Although Respondent also claimed a possible orthopedic condition, the medical information CalPERS received did not establish a current or continuous disability based on any orthopedic condition. As a result, CalPERS did not evaluate Respondent's alleged orthopedic 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. At all times relevant to this appeal, the injury or condition which is the basis of the claimed disability must be permanent or of an extended and uncertain duration.¹

After reviewing all medical documentation and the IME report, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of his position based on internal (peripheral artery disease and venous insufficiency) conditions.

¹ Government Code section 20026 was revised effective January 1, 2018. This is the version of Gov. Code section 20026 in effect at the time of Respondent's 2016 application, CalPERS' 2017 determination, and Respondent's 2017 appeal.

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 April 4, 2022. 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, Dr. Weber testified in a manner consistent with his examination of Respondent and the IME report. Dr. Weber opined that his examination and review of Respondent's medical records showed that Respondent suffered from mild lower extremity venous disease with no peripheral artery disease. Dr. Weber opined that Respondent's mild lower extremity venous disease does not impact his ability to perform his job duties. Therefore, Dr. Weber's competent medical opinion is Respondent is not substantially incapacitated from performing his duties as a Supervising Correctional Cook.

CalPERS staff testified about CalPERS' review of Respondent's alleged orthopedic condition and multiple requests to Respondent for completed forms and any medical records supporting his claimed orthopedic condition. The information received from Respondent was insufficient because it did not establish continuous disability and was insufficient to invoke further independent medical evaluation. CalPERS never received a Physician's Report on Disability form regarding Respondent's orthopedic condition nor any medical records establishing Respondent was continuously disabled from November 2016 based on his claimed orthopedic condition. Accordingly, the issue at hearing was whether Respondent was substantially incapacitated from performing his Supervising Correctional Cook job duties due to internal (peripheral artery disease and venous insufficiency) conditions.

Respondent testified on his own behalf that he continues to have problems as a result of his internal conditions. Respondent testified that he did not have any orthopedic (neck) issues at the time he filed his application and that his neck began hurting in November 2021. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted a document from the Department of Motor Vehicles and letters from his workers' compensation insurance carrier to support his appeal. The workers' compensation insurance carrier letters were admitted as administrative hearsay. Hearsay evidence can be used to supplement or explain other evidence but is not sufficient by itself to support a finding.

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 failed to meet his burden of proving that he is substantially incapacitated from performance of his job duties based on internal (peripheral artery disease and venous insufficiency) conditions.

The ALJ found Dr. Weber's opinion to be credible, forthright and supported by the medical evidence. The ALJ also found that CalPERS did not make a determination regarding Respondent's orthopedic (neck) condition, because Respondent provided no medical evidence regarding his orthopedic condition to establish disability. The ALJ concluded that Respondent is not eligible for industrial 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 changing the word "is" to the word "his" after the word "perform" and before the word "regular" in line 4 of paragraph 15, on page 9 of the Proposed Decision.

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

June 15, 2022

Helen L. Louie
Attorney