

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Cesar Ureta (Respondent) was employed as a Psychologist for Chuckawalla Valley State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of his employment with CDCR, Respondent was a state safety member of CalPERS. Respondent resigned from CDCR on May 10, 2016; and his last date of employment was May 31, 2016.

On November 7, 2020, Respondent submitted an application for Service (SR) Pending Industrial Disability Retirement (IDR), based on a psychological (post-traumatic stress disorder) (PTSD) condition. Respondent retired for service effective November 1, 2020, and he has been receiving a service retirement allowance since then.

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 their 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.

Government Code section 21154 sets forth the requirements for submitting a timely application for disability retirement benefits, which requires the application to be made: (a) while the member is in state service, (b) while the member is absent on military service, (c) within four months after discontinuance of state service or while on an approved leave of absence, or (d) while the member is physically or mentally incapacitated to perform duties from the date of discontinuance of service to the time of application or motion.

As part of CalPERS' review of Respondent's medical condition, Alberto G. Lopez, M.D., a board-certified Psychiatrist, 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, and performed a physical examination including psychological testing. Dr. Lopez diagnosed Respondent with depression, unspecified anxiety disorder, and a learning disorder, but found that he does not meet the criteria for PTSD. Dr. Lopez found that Respondent was substantially incapacitated beginning September 2, 2021.

To be eligible for IDR, Respondent must establish that he was continuously incapacitated from the time he discontinued state service on May 31, 2016, until he applied for IDR on November 7, 2020. (Gov. Code § 21154, subd. (d).) After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent did not provide support that he was substantially incapacitated during that time.

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 remote hearing was held on March 30, 2023. Respondent was not present at the hearing but was represented by counsel throughout the entirety of the hearing.

Respondent CDCR did not appear, and the matter proceeded as a default against it pursuant to Government Code section 11520, subdivision (a).

At the hearing, Dr. Lopez testified in a manner consistent with his examination of Respondent and the IME report. Dr. Lopez's medical opinion is that Respondent did not establish continuous disability from 2016 to 2020. However, Dr. Lopez opined in his report that Respondent is permanently disabled and can no longer work in a prison environment because "he would not be able to perform psychological evaluations with inmates. He is too fearful to be at his former worksite. His anxiety is too high for that . . . and he would not be able to react appropriately to severe crises. He would not be able to respond to emergencies or crisis situations. He is too avoidant to do so."

Respondent called his treating Psychologist, Ling Orgel, Ph.D. to testify on his behalf. Respondent also submitted medical records from Dr. Orgel and other treating physicians to support his appeal. Dr. Orgel testified that she has treated Respondent since 2005, and opined that as a result of his PTSD, Respondent became substantially disabled from performing his usual job duties as a Psychologist for CDCR on March 14, 2016. Dr. Orgel testified that Respondent's disability is longstanding and chronic, and that he is unable to perform work in a prison environment. Dr. Orgel's treatment notes reflect that Respondent suffers from anxiety, depression, and PTSD. Dr. Orgel's notes and records indicate that Respondent continued to report feelings of distress due to anxiety, fear, and depressed mood, and he described being hypervigilant, mildly paranoid, having difficulty concentrating, feeling unsafe, and having intrusive thoughts about his employment.

Respondent also submitted the medical reports of Neuro Psychologist, Patricia Weiss, Ph.D. as evidence. Dr. Weiss tested Respondent in 2014 and 2015 for cognitive functioning, memory functioning, executive functioning, and emotional functioning. Dr. Weiss diagnosed Respondent with PTSD and noted that Respondent was presently on stress leave due to the suicide of a colleague and death of his boss, and that he was looking for another job but plagued by PTSD and overwhelming guilt. Dr. Weiss opined that Respondent met all six criteria for a formal diagnosis of PTSD. Dr. Weiss's reports were admitted as administrative hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but over timely objection is not sufficient to support a finding.

After considering all of the evidence introduced, as well as arguments made by the parties, the ALJ granted Respondent's appeal. The ALJ found that Dr. Orgel testified credibly and persuasively at hearing that Respondent has been continuously substantially incapacitated since March 14, 2016. The ALJ found Dr. Orgel's opinion regarding Respondent's disability and inability to work in a prison environment to be consistent with Respondent's medical records and job duties. Furthermore, Dr. Orgel treated Respondent for over 17 years and has significantly more knowledge of the events and Respondent's psychological condition and limitations leading up to and during the relevant time period than did Dr. Lopez.

The ALJ found Dr. Lopez's opinion to be less persuasive than Dr. Orgel's opinion because he only met with Respondent once in 2022, whereas Dr. Orgel treated Respondent for over 17 years. Furthermore, the ALJ found Dr. Lopez's opinion that Respondent does not meet the criteria for a diagnosis of PTSD conflicted with the diagnostic criteria for PTSD.

The ALJ concluded that the medical evidence establishes that at the time of Respondent's separation from state service on May 31, 2016, and continuously from that time until the date of the SR Pending IDR application on November 7, 2020, Respondent was substantially incapacitated from the performance of his usual and customary duties as a Psychologist for CDCR, based on a psychological condition (PTSD). For these reasons, the ALJ found Respondent has met his burden and is eligible for IDR.

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

June 20, 2023

Nhung Dao
Attorney