



### RECENT LITIGATION — THE RODRIGUEZ CASE — REVERSED THE DENIAL OF A PEACE OFFICER'S DISABILITY RETIREMENT

by Scott O'Mara

Brian Marvel, President of the San Diego Police Officers Association, has identified a recent decision — *Rosafat Rodriguez, Jr. v. City of Santa Cruz* — in which the Appellate Court changed the denial of the granting of a disability retirement for a City of Santa Cruz police officer. The Sixth Appellate District, in a decision filed on 7/17/14, articulated clearly that, irrespective of the retirement system in which a peace officer is enrolled, there are direct and strong standards which need to be applied by the Superior Court in the review of a disability retirement denial.

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*When reviewing a disability retirement denial, the Superior Court must apply the proper standard of review.*

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Mr. Rodriguez, a police officer from 1995 until the date he retired for medical reasons in

July 2007, had numerous assignments which placed him in positions of high risk. However, the employer in this case attempted to dilute those experiences as the source of his post-traumatic stress disorder (PTSD), instead tracing this condition back to Mr. Rodriguez's time in the Marine Corps and the atrocities he observed along the Saudi Arabia-Kuwait border during the first Persian Gulf war. Mr. Rodriguez himself was actually in a state of denial relative to the horrendous events he witnessed while working as a police officer for the City of Santa Cruz, and — according to the City — did not acknowledge that to his treating doctors in a timely manner. In addition, the City questioned the Applicant's veracity and his entitlement to a disability retirement because he attempted to do work and create income after he left City employment.

As a result, the City denied Mr. Rodriguez's application for an industrial disability retirement and the Administrative Law Judge embraced the City's position. Mr. Rodriguez then fought that denial through a petition for writ of mandate, which the Superior Court denied.

The Sixth Appellate District correctly acknowledged that Mr. Rodriguez has a fundamental vested right to a disability pension, and the standard to measure that right is the incapacity of the injured employee to perform his/her duties. The Courts have construed "incapacitated for the performance of duty" to mean "the *substantial* inability of the applicant to perform his usual duties" (*Mansperger v. Public Employees' Retirement System* (1970)).

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*"Incapacitated for the performance of duty" means "the substantial inability of the applicant to perform his usual duties".*

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The Superior Court, in reviewing the administrative determination, acknowledged that the test to measure a worker's access to the fundamental vested right to a disability retirement is the *independent judgment test*, and the threshold of independent judgment requires the Superior Court to weigh and measure the evidence on their own, particularly the credibility of the applicant.

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The *substantial evidence test* allows the reviewing Court to defer to the factual findings. The *independent judgment test*, on the other hand, starts with the concept that the administrative findings are correct, but does not automatically accept those findings as being correct, depending upon the Court's determination as to whether or not the petitioner lacks credibility.

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*The Superior Court must make an "independent review". If this review does not occur, and the Court relies solely on the substantial evidence test, the Superior Court's review of the Administrative Law Judge's findings does not meet the proper and correct standard.*

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The Superior Court must make an "independent review". If this review does not occur, and the Court relies solely on the *substantial evidence test*, the Superior Court's review of the Administrative Law Judge's

findings does not meet the proper and correct standard. Therefore, in *Rodriguez*, the decision rendered by the Superior Court was determined to be lacking because the Court did not exercise the *independent judgment test*, and the matter was remanded back to the judge for further hearing.

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*The priority of the independent judgment test versus the substantial evidence test goes to the analysis done, or lack thereof, by the Superior Court judge.*

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The priority of the *independent judgment test* versus the *substantial evidence test* goes to the analysis done, or lack thereof, by the Superior Court judge. In numerous places, the Superior Court judge makes reference to deferring to the Administrative Law Judge. This deference fails to show a complete and in-depth analysis by the Superior Court judge as to the medical evidence and testimony with respect to Mr. Rodriguez's vested rights.

This case gives clarity and reinforces the process which must occur regarding vested rights, and that is, if a matter is appealed to the Superior Court, it requires application of the correct legal standard — the

*independent judgment test* — by the Superior Court of the Administrative Law Judge's determinations, not simply deference to the incorrect standard, the *substantial evidence test*. In other words, the *independent judgment test* involves the Superior Court undertaking a meaningful and correct review of the Administrative Law Judge's decision, not just a mirroring of that decision.

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