

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Amy M. Edelen (Respondent) was employed by Department of Consumer Affairs (Respondent DCA) as an Associate Governmental Program Analyst (AGPA). By virtue of her employment, Respondent was a state miscellaneous member of CalPERS.

On September 21, 2010, Respondent submitted an application for disability retirement on the basis of a rheumatological (fibromyalgia) condition. On December 10, 2010, CalPERS approved Respondent's application and her retirement became effective immediately.

On December 28, 2020, CalPERS staff notified Respondent that CalPERS conducts reexamination of persons on disability retirement and that she would be reevaluated to determine whether she remains substantially incapacitated and is entitled to continue to receive a disability retirement. To remain eligible for disability retirement, competent medical evidence must demonstrate that the individual remains substantially incapacitated from performing the usual and customary duties of her former 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.

As part of CalPERS' review of Respondent's medical condition, Respondent was sent for an Independent Medical Examination (IME) to Scott T. Anderson, M.D., and Pramila Gupta M.D. Dr. Anderson is a board-certified in Internal Medicine and Rheumatology. Dr. Gupta is board-certified in Psychiatry and Neurology. Both doctors interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records and sub-rosa videos. Both doctors performed a comprehensive IME in their respective specialties.

Dr. Anderson concluded that Respondent "does not have an actual and present rheumatological fibromyalgia impairment that arises to the level of substantial incapacity." His findings were that Respondent "appears to be healthy, well-nourished with normal muscular development and no evidence of rheumatological disease." He added, "there is no evidence of muscle wasting, joint instability, rheumatoid nodules, joint effusions, loss of pulses, or other pathology." Dr. Anderson determined that Respondent is "able to perform all essential job duties and opined that her job "appears to be an office job with little in the way of extensive physical requirements." Dr. Anderson believes that Respondent exaggerated her complaints because they "are myriad both in number and severity and yet the physical examination findings do not suggest any pathology, degenerative process, deconditioning, or inflammatory rheumatological condition." Dr. Anderson's opinion did not change after review of additional medical reports.

Dr. Gupta concluded that Respondent has some headaches, but they "do not arise to the level of substantial incapacity to perform her usual job duties. Dr. Gupta opines that Respondent can perform all her essential job duties. Dr. Gupta also noted that Respondent exaggerated her complaints of extensive limitation in her activities due to her headaches. Dr. Gupta's opinion did not change after review of additional medical reports.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was no longer substantially incapacitated, was no longer eligible for disability retirement, and should therefore be reinstated to her former position as an AGPA. On July 21, 2021, CalPERS notified Respondent of its determination.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). Two days of hearing were held on February 1 and March 13, 2023. Respondent was represented by counsel at the hearing. Respondent DCA did not appear at the hearing, and a default was taken as to Respondent DCA only.

At the hearing, both Dr. Anderson and Dr. Gupta testified in a manner consistent with their examinations of Respondent and their IME reports. Both IMEs testified that Respondent is no longer substantially incapacitated to perform her usual job duties.

Respondent testified on her own behalf that she has not worked since 2009 because she cannot commit to any schedule. She is unable to work on a computer, cannot talk on the phone, and cannot do math. If she is reinstated, she will suffer from “electrical overload” causing her symptoms to flare up and she will feel as if she is having a panic attack. Respondent submitted various medical records from her treating physicians to support her appeal, which were admitted as administrative hearsay. Hearsay may be used to supplement or explain other evidence but is not sufficient in itself to support a finding.

Respondent also called Anne Priest, D.O., to testify on her behalf. Dr. Priest is board-certified in Family Medicine. Dr. Priest testified that she has been treating Respondent since 2016 for fibromyalgia, low thyroid, migraines, anxiety, chronic fatigue, hypertension, and somatic dysfunction, using osteopathic manipulative therapy. Dr. Priest disagreed with the results of Dr. Anderson’s and Dr. Gupta’s examinations and reports, however she admitted that she does not know CalPERS’ standards in determining disability retirement.

The ALJ found that the competent medical evidence presented by Dr. Anderson and Dr. Gupta established that Respondent is no longer substantially incapacitated from performing her duties as an AGPA for Respondent DCA. The ALJ found Dr. Priest’s testimony less persuasive because she did not know the CalPERS standard for disability and did not testify whether she reviewed all of Respondent’s prior medical records, nor whether she reviewed the sub-rosa video. Both Drs. Anderson and Gupta reviewed Respondent’s copious medical documentation and examined her. Further, Dr. Anderson and Gupta are board-certified in Respondent’s claimed conditions, whereas Dr. Priest is board-certified in Family Medicine. The ALJ found Dr. Priest less qualified to render opinions on rheumatological and neurological issues. When all the evidence was considered, the ALJ found the opinions of Drs. Anderson and Gupta that Respondent is not substantially incapacitated more persuasive, credible, and reliable. Accordingly, the ALJ granted CalPERS’ request to reinstate Respondent from disability retirement.

Pursuant to Government Code section 11517, subdivision (c)(2)(C), the Board is authorized to “make technical or other minor changes in the proposed decision.” To avoid ambiguity, staff recommends correcting the spelling error by replacing “not” with “no” on page 14, paragraph 35 of the Proposed Decision.

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

June 20, 2023

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Senior Attorney