

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Patrick A. Hodak (Respondent) was employed by Respondent Division of Adult Parole Operations, California Department of Corrections and Rehabilitation (Respondent CDCR) as a Parole Agent I. By virtue of his employment, Respondent was a state safety member of CalPERS. On or about June 28, 2016, Respondent submitted an application for industrial disability retirement on the basis of an orthopedic (left wrist) condition. Respondent's application was approved by CalPERS and Respondent retired for disability effective December 31, 2016. Respondent was reexamined in 2018, and CalPERS determined that he continued to be entitled to receive an industrial disability retirement.

Later, in January 2020, CalPERS staff notified Respondent that CalPERS conducts reexamination of persons on disability retirement, and that his industrial disability benefits would be reevaluated for purposes of determining whether he remains substantially incapacitated and is entitled to continue to receive industrial disability retirement.

In order to remain eligible for industrial disability retirement benefits, competent medical evidence must demonstrate that Respondent remains substantially incapacitated from performing the usual and customary duties of his 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 Dr. Harry A. Khasigian, M.D., a board-certified Orthopedic Surgeon. Dr. Khasigian interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Khasigian also performed a comprehensive physical examination. Dr. Khasigian opined that Respondent is able to perform all his usual and customary job duties and is not substantially incapacitated for the performance of his Parole Agent I duties.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was no longer substantially incapacitated, was no longer eligible for industrial disability retirement, and should therefore be reinstated to his former position as a Parole Agent I.

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 September 29, 2021, and October 20, 2021. Respondent was represented by counsel at the hearing. Respondent CDCR did not appear at the hearing. The ALJ found that the matter could proceed as a default against CDCR, pursuant to Government Code section 11520.

At the hearing, Dr. Khasigian testified in a manner consistent with his examination of Respondent, and the reports prepared after the IME and following his review of additional medical records and information. Dr. Khasigian's medical opinion is that Respondent can perform the duties of his position and is therefore no longer substantially incapacitated. Dr. Khasigian testified that Respondent's high level of subjective complaints are not corroborated by any objective findings.

Respondent called his Workers' Compensation physician Natalya Shtutman, M.D., board-certified in Physical Medicine and Rehabilitation, to testify on his behalf. Dr. Shtutman's opinion is that Respondent is substantially incapacitated for the performance of his Parole Agent I job duties. Respondent submitted medical records from his Workers' Compensation physicians and occupational therapists to support his appeal.

Respondent testified about his left wrist condition and his limitations due to his condition. He testified that he is currently employed as a project manager for a private security company. Respondent also testified that he disagreed with the results of Dr. Khasigian's examination and reports, and alleged that Dr. Khasigian did not perform a comprehensive IME.

The ALJ found Dr. Khasigian's opinion to be more persuasive than that of Dr. Shtutman because "[h]is IME report and supplemental reports documented a thorough review of [R]espondent's medical records and a detailed examination, and persuasively explained the factual bases for his conclusions and opinions." The ALJ further noted that "Dr. Khasigian's opinion was also consistent with the findings of Drs. Van Dolson and Nijjar following their QMEs of [R]espondent in 2018 and 2019, respectively" and that "Dr. Khasigian's IME report and five supplemental reports detailed the extensive physical examination and medical record review he conducted in reaching his conclusion." The ALJ noted that Dr. Shtutman's opinion:

[W]as largely based on [R]espondent's subjective reports of pain and inability to perform certain functions. Her examinations of [R]espondent were not as comprehensive as the IME performed by Dr. Khasigian. Though she did physically examine his left wrist, Dr. Shtutman admitted she performed no diagnostic tests to corroborate [R]espondent's subjective complaints of pain and lack of function.

After considering all of the evidence introduced as well as arguments by the parties at the hearing, the ALJ denied Respondent's appeal. The ALJ found that "CalPERS established by competent and persuasive medical evidence that Respondent is no longer substantially incapacitated for the performance of his usual job duties as a Parole Agent I due to an orthopedic (left wrist) condition."

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

February 15, 2022

Helen L. Louie
Staff Attorney