

ATTACHMENT B

STAFF'S ARGUMENT

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

Leanne M. Tornow (Respondent) was employed by Respondent California State University, Long Beach (Respondent CSULB) as a Police Dispatcher. By virtue of her employment, Respondent was a state miscellaneous member of CalPERS. On October 12, 2018, Respondent applied for disability retirement based on an orthopedic (left shoulder) condition. Respondent's application was approved by CalPERS and she retired effective November 5, 2018.

In 2019, CalPERS staff notified Respondent that CalPERS conducts reexamination of persons on disability retirement, and that she would be reevaluated for purposes of determining whether she remains substantially incapacitated and continues to be entitled to continue to receive a disability retirement.

In order 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 Michael J. Chuang, M.D., a board-certified orthopedic surgeon. Dr. Chuang interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Chuang also performed a comprehensive IME. Dr. Chuang opined that Respondent was no longer substantially incapacitated from the performance of her job duties as a CSULB Police Dispatcher due to her orthopedic condition.

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 a Police Dispatcher.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on January 5, 2022. Neither Respondent nor Respondent CSULB appeared at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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. Chuang testified in a manner consistent with his examination of Respondent and his IME report. Dr. Chuang's physical examination of Respondent revealed that she is right-hand dominant. He found no evidence of any specific wasting, atrophy, or instability of the left shoulder girdle. Results of objective tests for abduction, rotation and flexion were all within normal limits. Dr. Chuang similarly found no problems with Respondent's elbows. The range of motion and gross muscle strength testing for both elbows fell within normal limits, and Respondent had no complaints of tenderness or discomfort. Dr. Chuang also found that Respondent's left hand had full motion of her fingers with no atrophy or deformities. Objective strength tests of her hand, wrist and fingers again scored well within normal limits.

Dr. Chuang concluded that Respondent should not perform any heavy lifting with her left arm, or carry or lift anything weighing more than 15 pounds with her two hands. Even with these restrictions, Dr. Chuang opined that Respondent was not substantially incapacitated from performing the duties of a CSULB Police Dispatcher.

Respondent appealed CalPERS' determination, but she did not appear at the hearing, nor did she offer any evidence to rebut the findings by the IME.

After considering all of the evidence introduced at the hearing, the ALJ denied Respondent's appeal. The ALJ found that the only competent medical evidence was presented by Dr. Chuang, and his testimony established that Respondent is no longer substantially incapacitated from performing her duties as a Police Dispatcher for Respondent CSULB. The ALJ concluded that CalPERS established by a preponderance of the evidence that Respondent is no longer substantially incapacitated from the performance of her duties as a CSULB Police Dispatcher.

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 that paragraph 2 on page 11 be changed from "disability of permanent or extended and uncertain duration, which is expected to last at least 12 consecutive months, as determined by the board" to "disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board."

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

March 16, 2022

Austa Wakily
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