

## **STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION**

Christina A. Alderete-Gray (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated March 21, 2023. For reasons discussed below, staff argues the Board should deny the Petition for Reconsideration and uphold its decision.

Respondent was employed as a Personnel Specialist for California Medical Facility, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of her employment, Respondent was a state safety member of CalPERS.

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 his or her 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. With respect to state industrial members, "industrial" means death or disability resulting from an injury that is a direct consequence of a violent act perpetrated on his or her person by an inmate or a parolee.

On February 12, 2020, Respondent filed an application for industrial disability retirement (IDR). On September 27, 2022, CalPERS determined that Respondent was substantially incapacitated from the duties of her position and granted her disability retirement. However, CalPERS also determined that Respondent was ineligible to receive "industrial" disability retirement benefits because her disability did not result from an injury that was the direct consequence of a violent act by an inmate or parolee.

Respondent appealed this determination and exercised her right to a hearing before an ALJ with the Office of Administrative Hearings (OAH). The sole issue addressed at the hearing was whether Respondent's injury was a direct consequence of a violent act perpetrated on her by an inmate. A hearing was held on February 23, 2023. Respondent represented herself at the hearing. Respondent CDCR did not appear at the hearing, and a default was taken as to Respondent CDCR only.

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, answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing, CalPERS presented Respondent's medical records documenting the diagnosis of and resulting limitations from Respondent's orthopedic conditions. None of the records indicated that Respondent's conditions resulted from an injury that was a direct consequence of a violent act by an inmate or parolee.

Respondent testified on her own behalf that she was initially injured in 2012 while moving offices at work. She sustained further cumulative injury from repetitive

keyboarding and mouse use. Respondent admitted that she was never violently attacked by an inmate or parolee, but argued that the standard applied to state industrial members limiting their ability to collect industrial disability retirement is unfair. She testified that she was harassed by a former manager to the point where she had to be escorted to her vehicle at times. She also claimed that a CalPERS representative told her to check the box for industrial disability retirement on the basis that her disability arose from her employment.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent had the burden of proof to show that she is entitled to receive industrial disability retirement benefits, and she did not meet her burden. It is undisputed that Respondent is a state industrial member of CalPERS. The ALJ found no evidence that Respondent's disability resulted from an injury that was the direct consequence of a violent act by an inmate or parolee. The ALJ noted that any harassment by a former manager does not qualify as a violent act by an inmate or parolee. Finally, the ALJ found that any erroneous representations made by a CalPERS employee regarding possible eligibility for industrial disability retirement benefits cannot override clear statutory eligibility requirements. While Respondent's testimony was credible, the decision to treat state safety members differently from state industrial members for purposes of industrial disability retirement benefits is a policy decision made by the Legislature. Neither CalPERS nor the OAH has discretion to depart from the plain language of a state statute. Thus, the ALJ concluded that Respondent is not eligible for industrial disability retirement benefits.

At its June 20, 2023, meeting, the Board adopted the Proposed Decision as its own Decision. Respondent now petitions the Board to reconsider its decision, raising the same arguments that were considered and rejected by the ALJ. No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the June 20, 2023, meeting was well reasoned and based on the credible evidence presented at hearing.

For all the foregoing reasons, staff recommends that the Board should deny Respondent's Petition for Reconsideration.

July 19, 2023

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