

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Robin M. Rothwell-Allison (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated July 8, 2021, denying her application for industrial disability retirement. For reasons discussed below, staff recommends that the Board deny the Petition and uphold its decision.

Respondent applied for industrial disability retirement based on psychiatric (anxiety, depression and stress) and neurological (headaches and trigeminal neuralgia) conditions. By virtue of her employment as a Special Investigator for Respondent Department of Insurance (Respondent DOI), Respondent was a state safety member of CalPERS.

Respondent filed an application for service pending industrial disability retirement on August 17, 2019. She has been receiving service retirement benefits effective October 1, 2019.

As part of CalPERS' review of Respondent's medical condition, Khaled Anees, M.D., a board-certified Neurologist, performed a neurological Independent Medical Examination (IME). Dr. Anees interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed her medical records, and performed a physical examination. Dr. Anees opined that Respondent has a history of trigeminal neuralgia with ongoing symptoms, but there were no objective findings indicating significant physical/cognitive neurological deficits or neurological loss that would warrant substantial incapacitation. She had an essentially unremarkable neurological examination at the IME. Dr. Anees opined that Respondent is not substantially incapacitated from performance of her Special Investigator job duties.

Lawrence Warick, M.D., Ph.D., a board-certified Psychiatrist performed a psychiatric IME of Respondent. Dr. Warick interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed her medical records, administered the Million Clinical Multi-axial Inventory-IV (MCMI-IV) psychological test, and performed a mental status examination. Following the IME, Dr. Warick opined that Respondent developed a mild to moderate adjustment disorder that is nondisabling, had basically resolved, and she has not required any medication for it. Respondent's psychological test results confirmed Dr. Warick's clinical impression. Dr. Warick opined that Respondent is not substantially incapacitated from performance of her Special Investigator job duties.

In order 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.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of her position.

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 March 15, 2021. Respondent represented herself at the hearing. Respondent DOI did not appear 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.

Between the time of the IME examination and the hearing date, Dr. Warick passed away. CalPERS and Respondent stipulated to the admission of all medical reports presented at hearing. CalPERS presented the medical reports of Dr. Anees, Dr. Warick and David E. Sones, M.D., a board-certified Psychiatrist who performed a Qualified Medical Examination (QME) in Respondent's Workers' Compensation claim and opined in his QME report that Respondent is capable of performing her usual and customary work duties without the need for any modifications. Respondent presented the medical reports of her treating physicians and physicians who examined and/or treated her for her Workers' Compensation claim. These reports were all admitted as direct evidence.

Respondent testified on her own behalf. She testified about her Special Investigator job duties, that her job was stressful, and that she experienced personnel issues at DOI. She testified that she cannot perform her job duties as a result of her trigeminal neuralgia and stress.

Respondent also called two percipient witnesses: her former supervisor at DOI and a former Supervising Investigator to testify on her behalf. Both witnesses testified about Respondent's job duties, her job performance, and her limitations during her trigeminal neuralgia flare-ups.

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 was substantially incapacitated, and she did not meet her burden. The ALJ found that CalPERS presented competent medical evidence demonstrating that Respondent is not substantially incapacitated from performing her usual job duties as a Special Investigator for Respondent DOI. The ALJ concluded that

the weight of competent medical evidence does not establish that Respondent is eligible for industrial disability retirement.

The Board adopted the Proposed Decision at the September 15, 2021 meeting.

The Petition for Reconsideration duplicates Respondent's previous Arguments presented to the ALJ at hearing and submitted to the Board in opposition to the Proposed Decision. Respondent disagrees with the ALJ's findings of fact, legal analysis and weighing of the evidence. However, it is clear from the 22 page Proposed Decision that evidence was taken, numerous exhibits were submitted on the issue of Respondent's claimed disability, and the ALJ thoroughly considered all the evidence in reaching the conclusion that Respondent failed to establish that she is substantially incapacitated from performing her job as a Special Investigator. The evidence presented at the hearing established that Respondent was not substantially incapacitated from performing her job as a Special Investigator.

No new evidence or legal arguments have been presented by Respondent that would alter the analysis of the ALJ or warrant reconsideration by the Board. The Proposed Decision adopted by the Board at the September 15, 2021 meeting was well reasoned, and based on credible facts, correct legal analysis and competent medical evidence. For all of the above reasons, the Petition for Reconsideration should be denied.

November 17, 2021

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