

ATTACHMENT B

STAFF'S ARGUMENT

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

Respondent Kim Carter (Respondent) applied for industrial disability retirement based on orthopedic (low back, left shoulder, right knee) conditions. By virtue of her employment as a Correctional Officer for Respondent California State Prison - Corcoran, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

Respondent filed an application for service pending industrial disability retirement on April 15, 2020 and has been receiving service benefits since that time.

As part of CalPERS' review of Respondent's medical condition, Don T. Williams, M.D., a board-certified orthopedic medical provider, performed an Independent Medical Examination (IME). Dr. Williams interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Williams opined that Respondent was able to perform her usual and customary duties, and was not substantially incapacitated.

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 October 6, 2021. Respondent represented herself at the hearing. Respondent CDCR 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.

At the hearing, Dr. Williams testified in a manner consistent with his examination of Respondent and the IME report. Dr. Williams' physical examination of Respondent's cervical spine was relatively normal. Although Respondent's cervical and upper

extremity range of motion was slightly diminished, the limitations were age related and still within a functional range. Dr. Williams completed numerous tests on Respondent's lumbar spine, and the results were normal. Respondent underwent a nerve conduction study, and those results were normal.

Dr. Williams reviewed Respondent's prior medical records, and he opined that she had age related arthritic spondylosis and facet arthropathy. Dr. Williams opined that the medical records were consistent with his findings that Respondent's injuries were relatively mild. Dr. Williams found it significant that Respondent's workers' compensation qualified medical examiner found that she had no ratable impairment and that she could return to her regular duties.

Dr. Williams medical opinion is that Respondent is able to perform her job duties without limitation. Therefore, Respondent is not substantially incapacitated.

Respondent testified on her own behalf that she is unable to return to work. She testified that her current injuries were caused by an altercation with a combative inmate. Respondent did not call any physicians or other medical professionals to testify.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that it was Respondent's burden to prove that she is substantially incapacitated from performing her usual and customary duties. Because she did not present any competent medical opinion at the hearing, Respondent did not meet her burden. Thus, the ALJ concluded that Respondent is not eligible for industrial disability retirement.

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 "mean disability of permanent or extended and uncertain duration" in the quotation at the top of page 15 be changed to "mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death."

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

January 18, 2022

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