

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Annik D. Dunlap (Respondent) applied for disability retirement on March 18, 2021, based on orthopedic (bilateral hands, low back, neck, and left knee) conditions. By virtue of her employment as a Workers' Compensation Claims Adjuster for Respondent State Compensation Insurance Fund (Respondent SCIF), Respondent was a state miscellaneous member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Don T. Williams, M.D., a board-certified Orthopedic Surgeon, 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, reviewed her medical records, and performed a physical examination. Dr. Williams opined that Respondent was not substantially incapacitated from performance of her 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 report, 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 July 19, 2022. Respondent represented herself at the hearing. Respondent SCIF was represented by counsel 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 reports. Dr. Williams' medical opinion is Respondent has some objective findings, but those findings and her subjective complaints of pain do not prevent her from performing her job duties. For example, Dr. Williams found that Respondent had surgery on her lumbar spine with good results; she had normal upper extremity reflexes and adequate grip strength; she had good range of motion in her hands and arms, acceptable range of motion in her neck; good motion in her lumbar spine; and her left hand had healed following surgery. Therefore, Dr. Williams medical

opinion is that Respondent is not substantially incapacitated from performing her Workers Compensation Claims Adjuster job duties.

Respondent testified about her pain and limitations due to her orthopedic conditions. She did not call any physicians or other medical professionals to testify. She submitted medical records to support her appeal, which were admitted as administrative hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but is not sufficient in itself to support a finding unless it would be admissible over objection in a civil action. (Gov. Code § 11513.)

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 and failed to present competent medical evidence to establish that she is substantially incapacitated from performing her Workers Compensation Claims Adjuster job duties. The ALJ found Dr. William's competent medical opinion to be persuasive and not contradicted by any of Respondent's medical records. Consequently, the ALJ concluded that Respondent is not eligible for disability retirement.

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

September 21, 2022

Helen L. Louie
Attorney