

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Kian Hemmati (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated March 29, 2021. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

Respondent worked as a Transport Engineer for Respondent California Department of Transportation (CalTrans). By virtue of his employment, Respondent was a state miscellaneous member of CalPERS.

Respondent filed an application for disability retirement on July 8, 2019 based on rheumatology (rheumatoid arthritis) and asthma conditions.

As part of CalPERS' review of Respondent's medical condition, Dan La, M.D., a board-certified Rheumatologist, performed an Independent Medical Examination (IME.) Dr. La interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints and reviewed his medical records. Dr. La opined that Respondent is not substantially incapacitated from performing his 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 of the medical documentation and the IME report, CalPERS determined that Respondent is not substantially incapacitated from performing the duties of his position.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH.) A hearing was held on February 12, 2021. Respondent represented himself at the hearing. CalTrans did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his 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. La testified in a manner consistent with his examination of Respondent and the IME report. Dr. La testified that in the absence of objective indicia of rheumatoid arthritis – particularly swollen or deformed joints and muscle atrophy – it is not medically possible to conclusively establish that Respondent suffers from the condition. Dr. La’s medical report noted that serologies for rheumatoid arthritis revealed negative rheumatoid factors and negative antinuclear antibodies (ANA). Dr. La found no evidence of muscle atrophy of the muscle groups of the upper and lower extremities. Dr. La found no significant weakness upon physical examination of Respondent. Based on his medical record review and physical examination of Respondent, Dr. La opined that Respondent is not substantially incapacitated.

Respondent testified on his own behalf at the hearing. Respondent stated that he began experiencing physical symptoms which interfered with his ability to work in 2012 and was initially diagnosed with fibromyalgia. Subsequently, Respondent claimed he was diagnosed with “seronegative” rheumatoid arthritis, a form of rheumatoid arthritis that does not have any markers of the condition in the patient’s blood. Various medications prescribed by his doctors alleviated his symptoms but either caused intolerable side effects or became increasingly ineffective.

Respondent testified that he has not worked since February 2019. He maintained that the fatigue and pain from his condition, as well as related symptoms such as photophobia, prevented him from spending hours before a computer and otherwise fulfilling the basic duties of his position. Respondent also stated that he could not work during periods of asthma flair-ups and that his employer’s efforts to help him cope with these, such as moving his work location, were not effective.

Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from his treating physicians to support his appeal.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that much of Respondent’s medical submissions discussed the difficulty of diagnosing rheumatoid arthritis and its overlap and similarity to other conditions, including fibromyalgia. However, there was insufficient evidence in the record to support Respondent’s claim of disability based on rheumatoid arthritis or asthma.

The ALJ found Respondent’s medical evidence insufficient for two more reasons. First, none of Respondent’s medical experts expressly incorporated his job duties and their relationship to his condition. Without acknowledging and incorporating the specific physical and mental requirements of his work, their opinions cannot adequately support factual findings specific to the central question in this matter, *i.e.*, whether Respondent’s rheumatoid arthritis and asthma conditions render him substantially incapacitated from performing his job duties. Second, all of the medical evidence Respondent introduced was in the form of writings. Without live testimony, there was no opportunity to question witnesses directly and with specificity about whether or how Respondent’s conditions

impact his ability to work. Respondent's many submissions of medical records comprise medical opinion but, as hearsay, cannot independently establish the required legal element of "competent medical opinion" necessary to successfully establish his claim.

In his Petition for Reconsideration, Respondent does not argue that his application for disability retirement based on his alleged rheumatoid arthritis and asthma conditions was improperly denied, which are the only issues raised in his appeal. Instead, Respondent has mistakenly submitted a new application for disability retirement based on an alleged fibromyalgia condition by filing this Petition for Reconsideration. His attempt must fail. He was provided several months to amend his application to allege fibromyalgia, but he never did so. In fact, CalPERS still does not have a completed application for disability retirement based on fibromyalgia condition. The ALJ reviewed facts and medical evidence solely based on Respondent's alleged rheumatoid arthritis and asthma conditions. Despite being given every opportunity to augment his application, he failed to do so.

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

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 16, 2021, meeting was well reasoned and based on the credible evidence presented at hearing.

July 14, 2021

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