

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Nefertari J. Guice (Respondent) signed an application for disability retirement on January 25, 2021, based on an orthopedic (left hip) condition. By virtue of her employment as a Library Associate for County of Solano (Respondent County), Respondent was a local miscellaneous member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Harry A. Khasigian, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Khasigian interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed her medical records, performed a physical examination, and obtained imaging studies. Dr. Khasigian opined that Respondent was not substantially incapacitated from performing 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 October 12, 2022. Respondent was represented by counsel at the hearing. Respondent County did not appear at the hearing. The ALJ found that the matter could proceed as a default against Respondent County, pursuant to Government Code section 11520, subdivision (a).

At the hearing, Dr. Khasigian testified in a manner consistent with his examination of Respondent and the IME report. Dr. Khasigian's medical opinion is Respondent's x-rays showed normal bilateral hip joints, without damage to the bones or cartilage; and ossification of the lumbar spine, which would not cause pain. Respondent has tendonitis/bursitis of her left hip, but it is a transient condition that could be fully resolved with appropriate treatment. Therefore, Dr. Khasigian's medical opinion is Respondent is not substantially incapacitated from performing her Library Associate job duties.

Respondent testified on her own behalf regarding her employment history with Respondent County, her job duties, her left hip condition, and her limitations due to her condition. Respondent did not call any physicians or other medical professionals to testify nor did she submit any medical records to support her 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 Respondent had the burden of proof and failed to present competent medical evidence to establish that she is substantially incapacitated from performing the usual duties of a Library Associate. The ALJ found Dr. Khasigian's competent medical opinion to be persuasive. 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.

January 17, 2023

Helen L. Louie
Attorney