

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

California Department of Corrections and Rehabilitation (Respondent CDCR) employed Dr. Shahida Naz (Dr. Naz) as a Physician at Calipatria State Prison. She worked for approximately three years before the claimed injury.¹ By virtue of her employment, Dr. Naz is a state safety member of the California Public Employees' Retirement System (CalPERS) subject to Government Code section 21151.

Dr. Naz filed an application for industrial disability retirement in which she claimed injuries resulting in disabilities because of lumbar and cervical conditions, bilateral shoulder pain, hypertension, hypertensive heart disease, diabetes and glaucoma. In the application for industrial disability retirement, Dr. Naz claims to have injured herself when a chair rolled out from under her and she fell.

CalPERS arranged for Dr. Naz to be examined by three Independent Medical Examiners; Dr. Larry Pasquali, a Board-Certified Ophthalmologist, Dr. Sahniah Siciarz-Lambert, a Board-Certified Internist and disability analyst, and Dr. Robert L. Horner, a Board-Certified Orthopedic Surgeon. All physicians found that Dr. Naz was not substantially incapacitated from the usual and customary duties as a Physician.

After reviewing Dr. Larry Pasquali's report, Dr. Sahniah Siciarz-Lambert's report, and Dr. Robert L. Horner's report as well as other medical evidence, CalPERS staff denied Dr. Naz's application for industrial disability retirement. Dr. Naz appealed the decision and hearings were held on February 18, 2014 and May 6, 2014.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), Dr. Naz has the burden of showing that she is substantially incapacitated from performing the usual and customary duties in her position as a Physician. Prophylactic restrictions and risk of possible future injury cannot support a finding of disability. (*Mansperger v. Pub. Employees' Ret. System* (1970) 6 Cal.App.3d 873; *Hosford v. Bd. of Administration* (1978) 77 Cal.App.3d 854.)

Dr. Naz was represented by counsel. During the hearing, Dr. Naz and her friend testified about the duties of a Physician in Calipatria State Prison. Dr. Levin, Dr. Naz's supervisor, also testified as to the duties of a Physician. Dr. Naz claimed the physical demands of the position were significant and she would have to lift large inmates.

Dr. Pasquali testified that Dr. Naz's glaucoma occurred naturally; it was not related to her work and was not disabling. Dr. Naz withdrew this part of her claim for disability.

Dr. Siciarz-Lambert testified about the Respondent's heart disease, hypertension, and diabetes. Dr. Siciarz-Lambert found that Dr. Naz was moderately obese, was hypertensive with "poor control," had diabetes without significant evidence of end-organ damage, and appeared dissatisfied with her employment position. Taking all these

¹. Dr. Naz explained this was her first position as a treating physician outside of residency programs.

conditions into account, Dr. Siciarz-Lambert found Dr. Naz could perform the usual and customary duties of her position.

Dr. Dodge testified by phone on Dr. Naz's behalf. Dr. Dodge had evaluated Dr. Naz for her workers' compensation claim.² Dr. Dodge testified mainly about Dr. Naz's claim as to the lumbar spine condition. Dr. Dodge found Dr. Naz's condition precluded her from heavy lifting and repeated bending and stooping. He testified that if she engaged in these activities she would suffer additional injuries.

Dr. Horner, an Orthopedic Surgeon also testified extensively about Dr. Naz's orthopedic condition. He and Dr. Dodge were in agreement that Dr. Naz was not limited by her shoulder injury or her cervical condition. Dr. Horner initially found Dr. Naz substantially incapacitated from the duties of her position based on the description of her job duties which included relocating hips and shoulders and lifting repetitively 20 pounds and occasionally 25 pounds.

Prior to the hearing, Dr. Horner was provided with a description of Dr. Naz's duties from Dr. Levin and Dr. Horner changed his opinion, because Dr. Naz's position as a physician was not as physical as had been described by Dr. Naz. Dr. Horner testified about the MRI and explained Dr. Naz's condition was typical of what was found in obese adults and was not necessarily due to trauma. Dr. Horner believed Dr. Naz exaggerated her complaints. Dr. Horner found Dr. Naz could perform the usual and customary duties of her position.

At the hearing, Dr. Naz submitted workers' compensation records including those of Dr. Dodge.

In finding in favor of Dr. Naz, the Administrative Law Judge (ALJ) found Dr. Dodge to be more credible than Dr. Horner. He also found that the usual and customary duties for the position were as described by Dr. Naz. The ALJ granted Dr. Naz's application for industrial disability retirement, with the caveat that if there is a dispute concerning the industrial origin of her disability, the Workers' Compensation Appeals Board will resolve the dispute, per Government Code section 21166.

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 the words "industrial" be inserted before the word "disability retirement" on pages one (caption), two, six, eight, ten, fourteen, and nineteen of the Proposed Decision. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision, as modified.

² . The ALJ explained on the record that his father had been successfully treated by the orthopedic group with which Dr. Dodge was affiliated, and that he held that medical group in high regard.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member is unlikely to file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

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