

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Josephine Okwu (Respondent) was employed by the State of California, Department of Transportation (CalTrans) as an Accounting Officer (Specialist). By virtue of her employment, Respondent was a state miscellaneous member of CalPERS. In 2003, Respondent submitted an application for disability retirement on the basis of a claimed psychological condition. CalPERS approved Respondent for disability retirement in February, 2004.

In May 2004, just three months after having been approved for disability retirement, Respondent submitted the first of three requests for reinstatement (Reinstatement from Disability/Industrial Disability Retirement Application). CalPERS' staff denied Respondent's request for reinstatement in April 2005. Respondent did not appeal CalPERS staff's determination. In August, 2005, just four months after Respondent's initial request for reinstatement had been denied, Respondent made her second request for reinstatement from disability retirement. Respondent was evaluated by a Board-certified psychiatrist, who concluded that she remained substantially incapacitated because of severe mental illness. CalPERS' staff denied Respondent's request for reinstatement. Respondent appealed this determination. The matter was the subject of a three-day hearing, which resulted in a Proposed Decision that denied Respondent's appeal. The Board adopted the Proposed Decision. Respondent then unsuccessfully challenged the Board's Decision in Superior Court and the Court of Appeal.

In November, 2011, Respondent filed a third request for reinstatement from disability retirement. That request was not immediately processed by CalPERS' staff because Respondent was pursuing separate lawsuits against CalPERS and CalTrans in both Federal District Court and Superior Court, seeking a court order reinstating her to her former position. Respondent was unsuccessful in both actions. However, as part of the resolution of the most recent lawsuit naming CalPERS as a defendant, CalPERS' staff agreed that they would treat the 2011 request for reinstatement as if it had been submitted in 2013. As a result, Respondent was evaluated by Damon Walcott, M.D., a Board-certified psychiatrist in December 2013. Dr. Walcott prepared a written report, which contained his observations, findings, and conclusions. Dr. Walcott expressed his opinion that Respondent remained substantially incapacitated from performing the usual and customary duties of an Accounting Officer (Specialist) for CalTrans. CalPERS' staff denied Respondent's request for reinstatement. Respondent appealed CalPERS' staff determination that she remained disabled and the matter was the subject of a hearing on August 31, 2015, and September 1 and 2, 2015. Respondent was represented by an attorney before and during the hearing.

In order for an individual to be eligible for disability retirement, competent medical evidence must demonstrate that they are substantially incapacitated from performing the usual and customary duties of their position. The injury or condition which is the basis for the claimed disability must be permanent or of an extended and uncertain duration. Conversely, for an individual to be removed from disability retirement and reinstated to their former position, competent medical evidence must demonstrate that they are no longer substantially incapacitated due to the disabling injury or condition.

Respondent testified at the hearing. She claimed that she could return to her former position as an Accounting Officer (Specialist) with CalTrans and adequately perform the job duties. Respondent last worked in the position 12 years ago.

The Administrative Law Judge (ALJ) included his observations and impression of Respondent in the Proposed Decision.

[Respondent's] testimony was unusual. She was somewhat disengaged and took an inordinate amount of time to respond to many of the questions asked by counsel. She had difficulty performing mathematical functions and could not recall several of her psychiatric hospitalizations, without assistance. With rare exception, she limited her testimony to very brief responses. Her more expansive testimony sounded oddly robotic, as if being read from a book for the first time.
(See Factual Finding No. 15.)

A current Accounting Administrator II for CalTrans testified that the Accounting Officer (Specialist) position is "a high turnover job, requiring significant attention to detail, organizational skills, and the ability to work independently and under time pressure." The CalTrans witness described the position as being quite stressful.

Medical records considered by the ALJ documented Respondent's history of requiring psychiatric hospitalization because of severe symptoms (decompensation) caused by her mental illness. In 1995, Respondent was involuntarily hospitalized due to psychotic symptoms and bizarre behavior. In 1999, Respondent was involuntarily hospitalized due to severe psychotic symptoms. In 2003, Respondent was involuntarily hospitalized due to crying spells, acute suicidal behavior, confusion, and severe insomnia. In 2005, Respondent was involuntarily hospitalized under Welfare and Institutions Code Section 5150, presenting to the hospital in a semi-catatonic state, and claiming to hear voices telling her what to do. In 2009, Respondent was once again involuntarily hospitalized after refusing to take prescribed medication.

Respondent did call a psychiatrist to testify on her behalf. Haifeng Yu, M.D. is Respondent's treating psychiatrist. His treatment of Respondent is limited to prescribing medication. Dr. Yu was not familiar with the standards for CalPERS disability retirement. Dr. Yu stated that he understood that Respondent last worked at "some accounting job", but admitted that he had never reviewed a written job description or Duty Statement for the Accounting Officer (Specialist) position with CalTrans. Dr. Yu admitted that he had never discussed with Respondent what the job duties were (or are currently) for the Accounting Officer (Specialist) position. Dr. Yu did not prepare a written report regarding his evaluation of Respondent. Dr. Yu, at Respondent's request, prepared brief notes in 2009, 2010, and 2011, stating that Respondent could return to work. However, Dr. Yu admitted that, in preparing such notes, he was not stating an opinion that Respondent was capable of returning to and performing the usual and customary duties of the Accounting Officer (Specialist) position. Rather, he explained that he felt that Respondent's "next step" would be to try to return to the workforce, in some capacity, "in a therapeutic sense."

Dr. Walcott's written report was received into evidence and its contents considered by the ALJ. Dr. Walcott diagnosed Respondent with Schizoaffective Disorder, Bipolar type. The ALJ noted that Dr. Walcott's examination of Respondent "revealed severe degrees of impairment in memory, recall, and abstract thinking. She could not demonstrate the basic mathematic abilities to perform the core functions of her duties as an Accounting Officer (Specialist)."

The ALJ summarized Dr. Walcott's testimony at the hearing as follows:

Dr. Walcott also observed [Respondent's] testimony at hearing. He noticed significant cognitive impairment, which manifested in her inability to perform simple mathematic functions, and notable latency when responding to questions. He attributed the latency to reduced cognitive processing speed due to interference from chronic psychotic symptoms and gradual declines in cognitive capacity caused by the 'natural progression' of her mental illness. He explained that Schizoaffective Disorder is one of the most serious mental health conditions an adult can be afflicted with. It is generally life-long and chronically disabling. A person with Schizoaffective Disorder never heals to a curative state. The symptoms of the condition can be managed and sometimes reduced, but the condition progresses over time and leads to a slow accruing of deficits and functional limitations. That [Respondent's] condition is 'bipolar type' means that her psychotic symptoms will be exacerbated by lasting episodes of depression and at times mania (the opposite of depression), which results in hyperactivity, hyperirritability, impulsiveness, and losing the desire to obtain restorative sleep.
(See Factual Finding No.24.)

After considering all of the testimony and other evidence, the ALJ concluded that Respondent did not meet her burden of demonstrating, through competent medical evidence, that she was no longer substantially incapacitated from performing the usual and customary duties of the Accounting Officer (Specialist) position with CalTrans. The ALJ concluded that the competent medical evidence, consisting of the written report and testimony from Dr. Walcott, demonstrated that Respondent remains disabled and that staff correctly denied her application for reinstatement. The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

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 may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

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