

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Lucille J. McGowan (Respondent McGowan) applied for disability retirement on the basis of a rheumatological (rheumatoid arthritis) condition.¹ By virtue of her employment as a Custodian with Cerritos Community College District (Respondent CCCD), Respondent McGowan is a local miscellaneous member of CalPERS.

As part of CalPERS' review of her medical condition, Respondent McGowan was sent for an Independent Medical Examination (IME) to board-certified Rheumatologist Quang Vo, M.D. Dr. Vo interviewed Respondent McGowan, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Vo performed a comprehensive IME examination on June 6, 2015. After the June 6, 2015 IME, Dr. Vo found Respondent McGowan to be substantially incapacitated from performing her usual and customary job duties as a custodian.

Dr. Vo submitted two additional IME reports dated June 19, 2015 and July 8, 2015 at CalPERS' request. In the June 19, 2015 report, Dr. Vo again found Respondent McGowan to be substantially incapacitated due to the unpredictable nature of her condition and possible pain when doing her job. In the July 8, 2015 IME report issued by Dr. Vo, he determined that Respondent McGowan was not substantially incapacitated from performing her usual and customary job duties until 2009 due to the lack of objective medical evidence to the contrary.

Prior to the hearing, CalPERS explained the hearing process to Respondent McGowan and the need to support her case with witnesses and documents. CalPERS provided Respondent McGowan with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent McGowan's questions and clarified how to obtain further information on the process.

At the hearing, CalPERS made arguments, called Dr. Vo as a witness, and introduced documentary evidence, including medical reports. Dr. Vo testified to his examination and reports. Dr. Vo first explained his June 6, 2015 IME report, which stated that Respondent McGowan was substantially incapacitated from the performance of her usual and customary job duties as of July 2007. In the June 6, 2015 report, Dr. Vo attributed the incapacity to rheumatoid arthritis, and interstitial lung disease secondary to rheumatoid arthritis.

Dr. Vo then testified to his second IME report dated June 19, 2015. Dr. Vo testified that CalPERS asked him to explain his determination that Respondent McGowan was disabled even though her medical records were consistently normal. CalPERS also asked Dr. Vo to disregard Respondent McGowan's obesity when making his determination.

¹ Respondent McGowan initially applied for disability retirement in 2012, although she resigned from employment in July 2007. CalPERS cancelled Respondent McGowan's application based on the ruling in the *Haywood* case. Respondent McGowan appealed the cancellation, and her appeal was granted.

Dr. Vo's second IME report again found Respondent McGowan to be substantially incapacitated from the performance of her usual job duties. The report explained that although the objective signs of rheumatoid arthritis were absent from the medical records from 2007 to 2009, Respondent McGowan's oral history indicates that she was substantially incapacitated as of 2007. The substantial incapacity thus resulted from the "potential exacerbation of ankle pain from rheumatoid arthritis" if Respondent McGowan returned to work.

Dr. Vo then testified to the objective symptoms of rheumatoid arthritis. He thoroughly explained that rheumatoid arthritis objectively manifests itself through the inflammation of the synovial membrane. Synovial inflammation is referred to as synovitis. Dr. Vo testified that rheumatoid arthritis does not manifest itself absent the presence of synovitis. So, if an examination does not indicate synovitis, then the symptoms of rheumatoid arthritis should not be present.

CalPERS requested a third IME report, Dr. Vo explained. This time, CalPERS requested Dr. Vo ignore Respondent McGowan's oral history, and instead focus on the objective symptom of synovial thickening to determine when Respondent McGowan first became disabled. At hearing, Dr. Vo testified to his July 8, 2015 report in which he did not find Respondent McGowan to be disabled until 2009. Dr. Vo explained that his determination changed due to the lack of objective evidence in Respondent McGowan's medical records. The records reviewed by Dr. Vo did not indicate the presence of synovitis until 2009. Hence, Dr. Vo testified that Respondent McGowan was not disabled until 2009.

Respondent McGowan testified at hearing as to her condition and medical history. Respondent McGowan testified that her rheumatoid arthritis first presented itself in 2007, causing seven hospitalizations in that year. Respondent McGowan also introduced an October 22, 2012 letter from Dr. Patrice Leonard stating that Respondent McGowan had been disabled since 2007. Dr. Leonard did not testify.

The ALJ (Administrative Law Judge) concluded that Respondent McGowan's appeal should be granted because the ALJ found that Respondent McGowan's testimony was more credible than that of Dr. Vo. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision is in favor of Respondent McGowan, it is unlikely she will appeal the decision. Therefore, the risks of adopting the Proposed Decision are minimal.

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