ATTACHMENT B

STAFF'S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION

Norma Jordana Moreno (Respondent) applied for disability retirement based on claimed rheumatological (fibromyalgia) and psychological (depression and anxiety) conditions. By virtue of her employment as a Purchasing Director for Respondent Corona-Norco Unified School District (Respondent District), Respondent was a local miscellaneous member of CalPERS.

Respondent filed an application for disability retirement on November 13, 2017.

As part of CalPERS’ review of Respondent’s medical condition, Quang Dinh Vo, M.D., a board-certified Internist, performed an Independent Medical Examination (IME). Dr. Vo interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Vo opined that Respondent was, at the time of the examination, substantially incapacitated from performing her duties for the District because of symptoms related to a diagnosis of fibromyalgia, but that such incapacity was not permanent. Dr. Vo opined that Respondent’s incapacity would not last longer than 12 months and that she would be able to return to her position as a Purchasing Director for the District without restrictions.

Richard Dorsey, M.D., a board-certified Psychiatrist, also performed an IME of Respondent. Dr. Dorsey interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed medical records, performed a Mental Status Exam and reviewed the results of psychological testing. Dr. Dorsey opined that Respondent was not substantially incapacitated from performing her usual and customary duties on the basis of any psychiatric condition.

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 reports, 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 May 16, 2019. Respondent represented herself at the hearing. Respondent District did not appear at the hearing.
Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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.

Copies of written job descriptions for the position of Purchasing Director for Respondent District were received into evidence and considered by the ALJ. Respondent also testified, describing her usual and customary job duties. The Purchasing Director planned, organized, supervised and directed the District’s purchasing, warehousing/distribution and mail room operations. The job was typically not physically demanding but could be stressful.

At the hearing, Dr. Vo testified in a manner consistent with his examination of Respondent and the IME report. Dr. Vo described fibromyalgia as being a “syndrome of widespread pain,” and that, while it is a recognized medical diagnosis, its cause is not clearly understood and the subjective complaints of the patient are the basis for making the diagnosis. Dr. Vo noted that Respondent, at age 39, had complained of generalized body pain, anxiety and depression since her 20’s.

Dr. Vo determined that Respondent had fibromyalgia based upon her reported medical history and his clinical examination. Dr. Vo found that Respondent complained of pain in specific trigger point areas but also found that Respondent did not have any sensory loss or loss of muscle strength. Focusing on the potential physical tasks listed in Respondent’s job duties, which included occasional lifting, pushing or pulling of up to 75 pounds, Dr. Vo testified that he believed Respondent – at the time of his examination – would be impaired in performing such tasks. However, Dr. Vo also stated in his IME report and testified at hearing, that Respondent had not been prescribed – and had not taken – any of the different medications that he, in his practice treating patients with similar symptoms, had used with success in relieving symptoms. The ALJ summarized Dr. Vo’s testimony and quoted relevant portions of his report, as follows:

However, Dr. Vo testified that [Respondent’s] disability was temporary because she had not yet tried enough pharmacologic therapies, as he believed there was a good chance that her condition would improve with such therapy. In his report, in response to CalPERS’s question regarding whether [Respondent’s] incapacity was permanent or temporary, and if it would last longer than 12 months, Dr. Vo wrote:

It is temporary. Based on the records reviewed and on the oral history provided, the claimant is able to exercise, perform limited yoga, walking [sic] the dog, and is currently not under adequate control pharmacologically. She had only started gabapentin last year without appropriate dose adjustment for titration yet to be affective [sic]. In my opinion, I believe her incapacity
is currently temporary and can be improved significantly such that it will last no longer than 12 months.

Respondent offered into evidence copies of medical records from Kaiser Permanente, where she was seen on two occasions by a Rheumatologist, Joanne Kang, M.D. Dr. Kang completed a CalPERS Physician’s Report on Disability form, indicating a diagnosis of fibromyalgia. And, similar to the opinions of Dr. Vo, Dr. Kang indicated that Respondent was incapacitated but did not state whether the incapacity was or was not permanent, writing “Not sure. …I am not a disability specialist. Please defer to a disability specialist for specifics.”

Dr. Dorsey testified consistently with the contents of his IME report. Dr. Dorsey stated that Respondent was “mentally stable” and able to perform her usual and customary duties. His Axis I diagnosis for Respondent was Depressive Disorder, Not Otherwise Specified, with Anxiety. Dr. Dorsey explained that this was consistent with Respondent’s self-reported history of experiencing symptoms of depression since her early 20’s, but that such symptoms did not prevent Respondent from pursuing her education, beginning her career and being successful in her profession.

Respondent testified, describing her symptoms of being tired, experiencing diffuse, widespread pain throughout her body, having morning stiffness, insomnia, memory loss and lack of concentration. Respondent testified that the demands of her position became increasingly stressful, leading to her decision to resign. Respondent did not call any physicians or other medical professionals to testify on her behalf. Respondent submitted medical records from her treating physicians to support her appeal, which were received into evidence as administrative hearsay.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that the only competent medical evidence presented was the evidence offered by CalPERS. The ALJ found that Respondent did not offer any competent medical evidence in support of her appeal and therefore did not meet her burden of proof. In making these findings, the ALJ correctly referred to the decision of the Court of Appeal, Reynolds v. City of San Carlos (1981) 126 Cal. App. 3d 208, 216-217. The Court in Reynolds held that an applicant for disability retirement is “not permanently disabled when he unreasonably refuses” treatment. As the ALJ concluded:

Given Dr. Vo’s testimony that [Respondent’s] incapacity was temporary, and [Respondent’s] failure to present any competent medical evidence that her disability was permanent, [Respondent] failed to prove that she suffered a “disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death,” as defined by Government Code section 20026.
For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

August 21, 2019

RORY J. COFFEY
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