

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Latanya P. Lair (Respondent) applied for industrial disability retirement based on orthopedic (left knee and back) conditions. By virtue of her employment as Senior Psychiatric Technician for Respondent California Institution for Women, California Department of Corrections and Rehabilitation (CDCR), Respondent was a state safety member of CalPERS.

Respondent filed an application for industrial disability retirement on March 7, 2018.

As part of CalPERS' review of Respondent's medical condition, Juan Antonio Realyvasquez, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Realyvasquez interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed her medical records, reviewed surveillance and internet videos, and performed a physical exam. Dr. Realyvasquez opined that Respondent is not substantially incapacitated and is able to perform her duties as described. Dr. Realyvasquez further opined that there were no objective findings that were present in Respondent that would make her unable to perform her duties because of physical limitations and that Respondent is fully qualified to perform her 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 requested a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on August 5, 2019. Respondent and CDCR did not appear at the hearing.

At the hearing, the ALJ received documentary evidence demonstrating that CalPERS had provided both Respondent and CDCR with proper notice of the date, time and place of the hearing. The ALJ found that the matter could proceed as a default against Respondent and CDCR, pursuant to Government Code section 11520.

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 Senior Psychiatric Technician for CDCR were received into evidence and considered by the ALJ.

At the hearing, Dr. Realyvasquez testified in a manner consistent with his examination of Respondent and the IME report. Dr. Realyvasquez's medical opinion is that "[R]espondent was not substantially incapacitated from performance of the usual duties of a psychiatric technician." Therefore, Respondent is not substantially incapacitated.

CalPERS also presented the testimony of a Supervising Special Investigator, who conducted surveillance of Respondent and obtained internet videos of Respondent in dance classes. The Investigator testified in a manner consistent with the Investigation Report, the Surveillance Videos and the Internet Videos. The evidence submitted by CalPERS showed Respondent loading and unloading items, handling laundry bags and doing laundry, sitting for a substantial period, and line dancing. Furthermore, the videos established that nothing about Respondent's behavior or expression in the videos suggested that she was guarding her movements or that she was in pain.

After considering all of the evidence introduced, the ALJ denied Respondent's appeal. The ALJ found as follows:

Respondent presented no competent, medical opinion evidence that she cannot perform the essential functions of a psychiatric technician. Accordingly, [R]espondent failed to prove by a preponderance of the evidence that, at the time she applied for industrial disability retirement, she was substantially incapacitated from performing the usual and customary duties of a psychiatric technician.

The ALJ concluded that Respondent is not eligible for industrial disability retirement.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

November 20, 2019

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Attorney