

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Jodi L. Fanning (Respondent) applied for disability retirement based on a neurological (bilateral foot) condition. By virtue of her employment as an Office Assistant for Respondent City of Palm Desert (Respondent City of Palm Desert), Respondent was a local miscellaneous member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Khaled Anees, M.D., a board-certified Neurologist, performed an Independent Medical Examination (IME). Dr. Anees interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Anees opined that Respondent was not substantially incapacitated from performing her usual and customary duties as an Office Assistant.

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 August 27, 2019. Respondent was represented by counsel at the hearing. Respondent City of Palm Desert did not appear at the hearing.

At the hearing, Dr. Anees testified in a manner consistent with his examination of Respondent and the IME report. Dr. Anees conducted a mental status examination, for which Respondent was alert and oriented to time, place, and person. The various nerve examinations conducted by Dr. Anees were all normal, as were the muscle examinations of Respondent's upper and lower extremities. The sensory exam showed Respondent had a reduced sensation to pinprick in the lower extremities below the knees in a non-dermatomal distribution. Respondent's gait was slow, but without any imbalance.

Because Respondent's treating physician diagnosed her with Complex Regional Pain Syndrome (CRPS), Dr. Anees specifically evaluated Respondent for that condition. Dr. Anees explained that trauma precedes 90 to 95 percent of CRPS diagnoses, and that the pain associated with CRPS generally follows a pattern. There was no trauma precipitating Respondent's CRPS, and Respondent's pain did not follow any pattern associated with CRPS. In addition, Respondent's 2014 electrodiagnostic testing was normal, which also does not support a CRPS diagnosis. Dr. Anees could not

corroborate Respondent's subjective complaints of pain with any objective findings. Dr. Anees did not agree that Respondent suffered from CPRS.

From a neurological standpoint, Dr. Anees concluded that Respondent was able to perform all of the usual and customary duties of her job as an Office Assistant. Dr. Anees' examination of Respondent was normal, and there was no evidence of neurological deficit to support a disability retirement. Therefore, Respondent is not substantially incapacitated from her job as an Office Assistant.

Respondent testified on her own behalf that she suffers from pain in her feet. Respondent said that the pain, which can be excruciating, prevents her from doing her job because it affects her concentration. Respondent's pain is triggered by walking, sitting, standing, and stress. Respondent has tried various treatments, but those treatments have not worked.

Respondent did not call any physicians or other medical professionals to testify.

Respondent submitted medical records from her treating physicians to support her appeal. Respondent's medical records were admitted as administrative hearsay under Government Code section 11513(d). Because the records were admitted as administrative hearsay, the records are insufficient on their own to support a finding of substantial incapacity.

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 evidence presented by Respondent was insufficient to refute Dr. Anees' testimony. Respondent did not introduce any competent medical opinion, so she was unable to meet her burden of demonstrating that she was substantially incapacitated from performing her usual and customary duties as an Office Assistant.

The ALJ concluded that Respondent is not eligible for 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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