

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Shelley Lipe (Respondent) applied for disability retirement based on psychiatric (depression) and cardiology (carotid stenosis, edema) conditions. By virtue of her employment as a Health Aide for Respondent Salinas City Elementary School District (Respondent SCESD), Respondent was a local miscellaneous member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Maria Antoinette D. Acenas, M.D., a board-certified Psychiatrist, and James Schmitz, M.D., a board-certified Cardiologist, performed Independent Medical Examinations (IME). Both doctors interviewed Respondent, reviewed her work history and job descriptions, obtained histories of her past and present complaints, and reviewed her medical records. Both doctors opined that Respondent is not substantially incapacitated from performing her usual and customary 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 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 September 4, 2019. Respondent was represented by counsel at the hearing. Respondent SCESD did not appear at the hearing.

At the hearing, Dr. Schmitz testified in a manner consistent with his examination of Respondent and the IME reports. Dr. Schmitz explained that Respondent suffered a massive heart attack for which she had bypass surgery. Following the bypass surgery, Respondent had significant improvement in her left ventricular systolic function to the point that it was normal. Dr. Schmitz did not see any signs of congestive heart failure during his examination. Although Respondent complained of edema in her legs, Dr. Schmitz found no evidence of such edema.

Dr. Schmitz's examination findings were consistent with Respondent's medical reports. A 2016 echocardiogram found the condition of Respondent's heart to be significantly improved following the bypass, and in relatively normal condition. In addition, several of the reports from Respondent's treating physician found no edema. Dr. Schmitz attributed any edema to the removal of a leg vein for the heart bypass grafts, and testified that the resulting edema, if any, is generally transitory and improves with time.

Respondent reported to Dr. Schmitz that she walked between 45 and 60 minutes most days of the week, and that Respondent was aware of her breathing after 15 minutes of walking. Dr. Schmitz found it significant that Respondent did not describe her breathlessness as severe, and that Respondent could continue to walk another 45 minutes following her initial trouble breathing.

Dr. Schmitz reviewed Respondent's job history, duties, and physical requirements. Dr. Schmitz also discussed Respondent's job duties with her and learned that Respondent only worked three and half hours each work day. Based on his examination and review of medical records, Dr. Schmitz concluded that Respondent was able to perform all of her duties as a Health Aide.

Respondent suffered a stroke in 2018 following an endarterectomy to repair a blocked carotid artery. Dr. Schmitz reviewed medical records following the stroke and explained that Respondent did not suffer any residual deficits in neurological function following the stroke. Moreover, the endarterectomy and resulting stroke did not involve the heart.

Dr. Schmitz ultimately determined that Respondent is not substantially incapacitated from performing her usual and customary duties. Respondent certainly endured a difficult course, but that course did not result in her substantial incapacity.

Dr. Acenas did not appear at the hearing. Due to objections by counsel for Respondent, Dr. Acenas's IME report was not admitted into evidence.

Respondent called Gregory S. Spowart, M.D., to testify on her behalf. Dr. Spowart performed the heart surgery on Respondent, and also performed her right carotid endarterectomy. Dr. Spowart opined that Respondent was substantially incapacitated from performing her duties as a Health Aide. However, Dr. Spowart was unfamiliar with the CalPERS standard for disability retirement. Dr. Spowart stated that he thought Respondent's pain would make it difficult to perform her job, but did not assert that Respondent was unable to perform her job.

Respondent testified on her own behalf, and explained the conditions that led to her application for disability retirement. Respondent thinks she is substantially incapacitated, but explained that the purported incapacity is because it would be difficult to perform her usual and customary duties.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent failed to establish that she is substantially incapacitated from performing her usual and customary job duties based on any of the conditions alleged. In addition, the ALJ found Dr. Schmitz to be persuasive in his conclusion that Respondent is not substantially incapacitated.

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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