

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Trina S. Rahm (Respondent) applied for industrial disability retirement based on claimed orthopedic (upper extremity, hand, wrist, and brachial neuritis) and internal (chemical exposure and asthma) conditions. By virtue of her employment as a Rehabilitation Therapist (ART) for Respondent California Medical Facility, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Harry A. Khasigian, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Khasigian interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed her medical records, and conducted a clinical examination of Respondent. Dr. Khasigian opined that Respondent is not substantially incapacitated from performing her usual and customary duties.

Respondent was also evaluated by Patricia Wiggins, M.D., a board-certified Internist. Dr. Wiggins conducted an IME focused upon Respondent's claims of being disabled because of exposure to fumes and asthma. Dr. Wiggins interviewed Respondent, reviewed her work history and job description, obtained a history of her past and present complaints, reviewed medical records and performed a clinical examination of Respondent. Dr. Wiggins 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 represented herself at hearing. Respondent CDCR 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.

At the hearing, Dr. Khasigian testified in a manner consistent with his examination of Respondent and the IME report. Respondent claimed that, on May 11, 2017, both of her hands began to cramp because she was "sending a lot of emails in a hurry." This incident supposedly resulted in permanent injury because, according to Respondent, she "has never been the same." Contrary to Respondent's claims, medical records disclosed that Respondent never had x-rays or other diagnostic studies performed regarding her hands or upper extremities; never had any kind of physical therapy prescribed for her hands or upper extremities; did not use any medications or topical creams in an effort to reduce pain; does not wear any sort of brace; and would see her family physician once every two months. Dr. Khasigian found no objective evidence of any injury or ongoing condition in either of Respondent's upper extremities or hands. Muscle strength, reflexes and sensation were all normal when tested. All tests for carpal tunnel syndrome were negative. Dr. Khasigian's medical opinion was and is that Respondent is not substantially incapacitated from performing her usual and customary job duties because of an orthopedic condition.

Respondent told Dr. Wiggins that she had been exposed to many different fumes while at work, including diesel exhaust, cleaning solvents, paint fumes, and refrigerator-coolant fumes. Respondent also claimed exposure to mold. Respondent made complaints to Respondent CDCR, which resulted in three separate investigations of air quality in Respondent's workplace by the California Office of Occupational Safety and Health (Cal/OSHA). In all three instances the Cal/OSHA investigations failed to find any violations and/or the existence of any fumes that could be considered abnormal. Against Respondent's claims of breathing problems, the ALJ summarized the evidence and testimony as follows:

Dr. Wiggins' physical examination and respondent's account of her medical history revealed that she did not have wheezing or chronic cough. She has no history of chronic or recurrent bronchitis or pneumonia. She has not required inhaled bronchodilators, and a diagnosis of asthma has not been verified. Her medical records reveal consistently normal oxygen saturation rates. Dr. Wiggins detected no expiratory wheezing or prolongation of the respiratory phase.

Dr. Wiggins testified that there is no objective evidence to support Respondent's claims of disabling breathing problems.

Respondent testified on her own behalf. Respondent did not call any physicians or other medical professionals to testify on her behalf. Respondent submitted medical records and other documents to support her appeal.

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 testimony and reports of Drs. Wiggins and Khasigian established that respondent was not substantially incapacitated from performing her usual job duties. Respondent offered no competent medical evidence to counter those opinions. Consequently, her disability retirement application must be denied.

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

November 20, 2019

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RORY J. COFFEY  
Senior Attorney