

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Linda J. Alvarez (Respondent) applied for industrial disability retirement based on an orthopedic (cervical spine, lumbar spine, right shoulder, right arm, right wrist, and right hand) conditions. By virtue of her employment as a Special Investigator for Respondent Department of Industrial Relations (Respondent DIR), Respondent was a state safety member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Robert J. Kolesnik, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Kolesnik 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. Kolesnik opined that Respondent was 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 requested to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on August 26, 2019. Respondent did not appear at the hearing. Respondent DIR did not appear at the hearing.

The ALJ found that CalPERS had provided both Respondent and Respondent DIR with proper notice of the date, time and location of the hearing. The ALJ found that the hearing could proceed as a default hearing as against both Respondent and Respondent DIR.

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. Kolesnik testified in a manner consistent with his examination of Respondent and the IME reports. An MRI study of Respondent's right shoulder revealed tendinitis, arthritis, and a probable small, partial thickness tear of the supraspinatus. An MRI study of Respondent's lumbar spine disclosed left lumbar scoliosis and "very slight" spondylolisthesis at L3-L4. An MRI study of Respondent's cervical spine disclosed minimal disc bulges at multiple levels. Nerve conduction studies and an EMG were entirely normal and there was no evidence of cervical radiculopathy, peripheral neuropathy or peripheral nerve root compression. Dr. Kolesnik's physical examination of Respondent was consistent with the results from the diagnostic studies. The ALJ summarized Dr. Kolesnik's finding as follows:

Dr. Kolesnik noted that there was no nerve root impairment at any level of the spine and the nerve conduction studies were within normal limits with no evidence of peripheral nerve compression, peripheral neuropathy, or cervical radiculopathy. Dr. Kolesnik's physical examination showed no neurological deficits or atrophy in either the upper or lower extremities.

Dr. Kolesnik's medical opinion was that Respondent was not, and is not, substantially incapacitated from performing her usual and customary duties for Respondent DIR because of any orthopedic condition.

After considering all of the evidence introduced, the ALJ denied Respondent's appeal. The ALJ found that CalPERS had presented competent medical evidence in support of its determination and that Respondent had failed to provide any evidence in support of her appeal.

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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