

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED**

Sarah M. Robinson (Respondent) applied for disability retirement based on orthopedic (lumbar spine) and psychiatric (depression and anxiety) conditions. By virtue of her employment as a Personnel Specialist for Respondent California Highway Patrol (CHP), Respondent was a state miscellaneous member of CalPERS.

Respondent signed an application for disability retirement on January 1, 2018, which was received by CalPERS on January 24, 2018.

As part of CalPERS' review of Respondent's medical conditions, Debra Templeton, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Templeton interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed her medical records and performed a physical exam. Dr. Templeton opined that Respondent was not substantially incapacitated from performing her job duties due to her orthopedic (lumbar spine) condition.

Alberto Lopez, M.D., a board-certified Psychiatrist, also performed an IME. Dr. Lopez interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed medical records, performed a Mental Status Exam and reviewed the results of psychological testing. Dr. Lopez opined that Respondent was not substantially incapacitated from performing her job duties on the basis of a psychiatric condition.

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 July 24, 2019. Respondent represented herself at the hearing. CHP did not appear at the hearing.

At the hearing, the ALJ received documentary evidence demonstrating that CalPERS had provided both Respondent and CHP with proper notice of the date, time and place

of the hearing. The ALJ found that the matter could proceed as a default against CHP, pursuant to Government Code section 11520 (a).

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 Personnel Specialist for CHP were received into evidence and considered by the ALJ.

Respondent testified on her own behalf and testified to the history of her medical conditions, the treatment she received, and the physicians she saw. She testified that her lower back pain began in 2012 and has progressively worsened. She further testified that her pain is usually between a 7 and a 9 on a scale of 10 and that her spinal fusion surgery in August 2014 did not relieve her pain. In addition, she testified that her depression and anxiety conditions are a result of her chronic back pain. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from her treating physicians to support her appeal.

At the hearing, Dr. Templeton testified in a manner consistent with her examination of Respondent and the IME report. Dr. Templeton's medical opinion is that she believes Respondent's pain complaints are real, but was unable to provide an anatomic explanation for Respondent's degree of pain and, objectively, she did not find anything in regards to Respondent's lumbar spine that would preclude Respondent from performing her job duties. Therefore, Dr. Templeton concluded that Respondent is not substantially incapacitated.

Dr. Lopez also testified at the hearing in a manner consistent with his examination of Respondent and the IME report. Dr. Lopez's medical opinion is that Respondent "is likely suffering from an anxiety and depressive disorder, and is in need of treatment" but "there were no specific job duties [R]espondent was unable to perform because of a physical or mental condition." Therefore, Dr. Lopez concluded that Respondent is not substantially incapacitated.

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 offer sufficient competent medical evidence at the hearing to support her disability retirement application. The ALJ further found as follows:

Dr. Templeton examined respondent, evaluated her using the CalPERS substantial incapacity standard, and found no anatomical findings consistent with [R]espondent's subjective reports of pain. She found, at most, respondent has SI joint dysfunction, which does not preclude her from performing a Personnel Specialist's job

functions. Respondent may have pain, but pain is not the threshold for substantial incapacity. Furthermore, Dr. Templeton noted the disassociation between [R]espondent's subjective reports of pain and the clinical manifestations of limitation or abnormality.

Dr. Lopez also examined [R]espondent, evaluated her using the CalPERS substantial incapacity standard, and found psychiatric conditions, but none that preclude [R]espondent's ability to perform her Job duties.

Respondent's application seeks disability retirement on the basis of orthopedic and psychiatric conditions; however, none of these conditions cause [R]espondent to be unable to perform the essential functions of the Personnel Specialist Job, now or at the time of her application.

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

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends that on page 3, paragraph 5a of "Factual Findings", the phrase "kneeling; climbing; squatting;" be deleted from "Occasional Tasks (up to three hours)."

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

November 20, 2019

---

HELEN L. LOUIE  
Attorney