

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Milena M. Combariza (Respondent) applied for industrial disability retirement based on a neurological (trigeminal neuralgia) condition. By virtue of her employment as a Psychologist for Respondent R.J. Donovan Correctional Facility, California Department of Corrections & Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

Respondent filed an application for service pending industrial disability retirement on December 1, 2017 and has been receiving benefits since that time.

As part of CalPERS' review of Respondent's medical condition, Paul Edward Kaloostian, a board-certified Neurological Surgeon, performed an Independent Medical Examination (IME). Dr. Kaloostian interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Kaloostian opined that Respondent is not substantially incapacitated from performing her job duties as a Psychologist. Dr. Kaloostian opined that Respondent was successfully able to perform her usual duties for 30 years, despite having atypical facial pain, and that her symptoms had not worsened which would currently prevent her from being able to perform her usual 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 report, 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. A hearing was held on September 17, 2019. Respondent represented herself at the 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. Kaloostian testified in a manner consistent with his examination of Respondent and the IME report. Dr. Kaloostian's medical opinion is that Respondent can perform the duties of her position. Dr. Kaloostian discussed Respondent's medical condition, and why he opined that Respondent suffered from atypical facial pain and not trigeminal neuralgia. Dr. Kaloostian also discussed his review of Respondent's medical history in connection with her ability to perform her job duties. Ultimately, Dr. Kaloostian testified that Respondent has been able to perform her job duties despite having atypical facial pain since approximately 1996, and that because her condition has not deteriorated he believed there was not a medical condition currently preventing her from performing her usual job duties. Therefore, Dr. Kaloostian concluded that Respondent is not substantially incapacitated.

Respondent testified on her own behalf that she was able to work without any issues from 2008 until 2015. Respondent testified that as a result of a change in management, her workload and paper requirements increased. Respondent testified that as a result of this additional workload and stress, she was no longer able to perform her usual duties.

Respondent called Juan Espana to testify on her behalf. Mr. Espana is a Research Economist and Respondent's husband. He testified that Respondent is suffering as a result of the increased workload, and that it is his belief that Respondent is not able to perform her usual duties.

Respondent also called Cheryl Noble to testify on her behalf. Ms. Noble was a Licensed Clinical Social Worker who worked with Respondent until February 2016. Ms. Noble testified that she believed the work requirements increased as a result of a change in management.

Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from her treating physicians 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 Respondent had the burden of establishing that she is substantially incapacitated from performing her usual and customary duties of a Psychologist at Respondent CDCR. The ALJ found that Respondent did not meet her burden.

The ALJ found that CalPERS presented competent medical evidence that Respondent is not substantially incapacitated. The ALJ found that although Respondent believed that her medical condition was exacerbated by stress at her job, she failed to present competent medical evidence that she was substantially incapacitated from the performance of her usual and customary duties.

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.

December 18, 2019

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