

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

(Respondent) applied for disability retirement based on psychological (anxiety, depression, and mental inability to work safely) conditions. By virtue of her employment as a Teacher for Respondent Mule Creek State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

Respondent filed an application for service pending disability retirement on August 17, 2018 and has been receiving benefits since that time.

As part of CalPERS' review of Respondent's medical condition, Alberto G. Lopez, M.D., a board-certified Psychiatrist, performed an Independent Medical Examination (IME). Dr. Lopez interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. In addition, Dr. Lopez had Respondent undergo psychological testing including the Minnesota Multiphasic Inventory-2 (MMPI-2) battery of testing. Based on Respondent's test results and the IME he performed, Dr. Lopez opined that Respondent is not substantially incapacitated from performing her duties as a Teacher with Respondent CDCR. Dr. Lopez found that Respondent does have some anxiety and stress, but that her condition does not rise to a diagnosable 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 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 December 11, 2019. Respondent appeared telephonically and represented herself. 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. In addition, CalPERS provided Respondent with all of the exhibits it intended to rely on at the hearing, and assisted Respondent with filing exhibits that she wanted to introduce as evidence at the hearing.

At the hearing, Dr. Lopez testified in a manner consistent with his examination of Respondent and the IME report. Dr. Lopez's medical opinion is that Respondent does suffer from some anxiety and stress, but that it does not rise to the level of a diagnosable psychiatric condition. Dr. Lopez believed some of this may be related to Respondent's personal and family life. Dr. Lopez testified that he was aware of the environment in which Respondent worked, but that he did not believe that she suffered from a psychological condition that would prevent her from performing all of her usual duties as a Teacher with Respondent CDCR. Therefore, Dr. Lopez testified that it was his medical opinion that Respondent is not substantially incapacitated.

Respondent testified on her own behalf that she suffered from post-traumatic stress disorder (PTSD). Because of her PTSD, Respondent testified that she did not believe she could fulfill her job duties and responsibilities. Respondent also argued that Dr. Lopez's testimony should not carry any weight because his examination lasted one hour.

Respondent did not call any physicians or other medical professionals to testify. Respondent submitted correspondence from her treating providers to support her appeal. Respondent submitted a letter from Julianne Stroup, Licensed Clinical Social Worker (LCSW), who treats Respondent where she currently lives, in New Mexico. LCSW Stroup's correspondence provides that Respondent suffers from Post-Traumatic Stress Disorder (PTSD) and associated symptoms of depression and anxiety related to her employment, and that Respondent is not capable of performing her job duties. Respondent also submitted unsigned documents from Ann Naimark, Licensed Marriage and Family Therapist (LMFT), who treated Respondent before she moved to New Mexico. The writings from LMFT Naimark listed specific job duties that she believed Respondent would not be able to perform.

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 did not meet her burden to establish by competent medical evidence that she is substantially incapacitated from the performance of her usual job duties. Because Respondent's medical documentation did not address their knowledge of CalPERS' disability standards and did not opine as to whether Respondent met those standards or not. In addition, no evidence was presented regarding the background, training and experience of LCSW Stroup and LMFT Naimark. In addition, the ALJ found there was virtually no objective medical evidence presented by either of them, or Respondent, to establish substantial incapacity. For these reasons, the ALJ gave this evidence minimal weight.

On the other hand, the ALJ found that Dr. Lopez's opinion that Respondent's stress symptoms were not supported by objective evidence was persuasive. In addition, the ALJ found that Dr. Lopez properly addressed CalPERS' disability retirement standards and concluded that there was no objective evidence to establish Respondent is substantially incapacitated from the performance of her usual duties.

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.

February 19, 2020

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