

ATTACHMENT B

STAFF'S ARGUMENT

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

Teresa C. Carranza (Respondent) applied for industrial disability retirement based on orthopedic (cervical spine, lumbar spine, bilateral knee, and bilateral wrist) conditions. By virtue of her employment as a Psychiatric Technician for Respondent California State Prison Corcoran, California Department of Corrections and Rehabilitation (CDCR), Respondent was a state safety member of CalPERS.

Respondent filed an application for service pending industrial disability retirement on June 21, 2018, and has been receiving benefits since June 23, 2018.

As part of CalPERS' review of Respondent's medical condition, John D. Kaufman, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Kaufman 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 examination. Dr. Kaufman opined that Respondent was temporarily substantially incapacitated for approximately another four weeks because she was recovering from recent carpal tunnel surgery and had pain and weakness using her right hand. He further opined that there will be no substantial incapacity from performance of her duties as a Psychiatric Technician after that time. CalPERS requested clarification from Dr. Kaufman regarding Respondent's job duties of lifting or carrying 50-100 pounds. Dr. Kaufman opined that Respondent "would be able to return to light duties after four weeks from her carpal tunnel surgery," and Respondent "would be unable to perform the physical duties of lifting or carrying 50-100 pounds until approximately six months after her carpal tunnel surgery." He opined that he did not anticipate any further incapacity for her full job description.

In order to be eligible for industrial 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 January 8, 2020. Respondent represented herself at the hearing. Respondent CDCR did not appear at the hearing.

At the hearing, the ALJ received documentary evidence demonstrating that CalPERS had provided both Respondent and CDCR with proper notice of the date, time and place of the hearing. The ALJ found that the matter could proceed as a default against CDCR, pursuant to Government Code section 11520.

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 Psychiatric Technician for CDCR were received into evidence and considered by the ALJ.

At the hearing, Dr. Kaufman testified in a manner consistent with his examination of Respondent and the IME reports. Dr. Kaufman opined Respondent had normal findings during his physical examination and his review of her medical reports for someone of her age. Dr. Kaufman testified that the subjective pain Respondent complained of was not supported by objective evidence and that Respondent appeared to have recovered from her neck and shoulder surgeries. He further opined that Respondent appeared to be recovering as would be ordinary and expected for a patient post-carpal tunnel surgery. Kaufman's medical opinion is that there were no job functions Respondent was unable to perform as a Psychiatric Technician. Therefore, Dr. Kaufman concluded that Respondent is not substantially incapacitated.

Respondent testified on her own behalf to the history and treatment of her orthopedic conditions, her symptoms and her limitations. 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 failed to offer sufficient competent medical evidence to establish that she was substantially incapacitated from performance of her usual duties as a Psychiatric Technician for CDCR. The ALJ further found that CalPERS presented persuasive evidence through Dr. Kaufman that Respondent's orthopedic conditions were not adequately supported by objective medical evidence and that she was not substantially incapacitated from performing her usual duties as a Psychiatric Technician

The ALJ concluded that Respondent is not eligible for industrial 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 correcting the definition for Government Code section 20026 from ". . . mean disability of permanent or extended and uncertain duration, as determined by the board . . . on the basis of competent medical opinion" to ". . . mean

disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board . . . on the basis of competent medical opinion” on page 15, in paragraph 2 and inserting the word, “industrial” before the word “disability” on page 14, in paragraphs 33 and Legal Conclusions paragraph 2; page 15, in paragraph 5; and page 16, in paragraph 8 of the Proposed Decision.

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

March 18, 2020

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Attorney