

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Sharon L. Steurer (Respondent) applied for disability retirement based on cardiologic (ventricular tachycardia) and neuropsychologic conditions. By virtue of her employment as an Associate Governmental Program Analyst (AGPA) for Respondent California Department of Public Health (Respondent DPH), Respondent was a state miscellaneous member of CalPERS.

Respondent filed an application for service pending disability retirement on November 16, 2018 and has been receiving service retirement benefits since that time.

As part of CalPERS' review of Respondent's medical condition, Malcolm M. McHenry, M.D., board-certified in Internal Medicine, with a subspecialty in Cardiovascular Medicine, performed an Independent Medical Examination (IME). Dr. McHenry interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. McHenry opined that Respondent was not substantially incapacitated on the basis of any current cardiovascular condition.

Respondent was also evaluated by Charles A. Filanosky, Ph.D. Dr. Filanosky has a bachelor's degree in psychology, a master's degree in education and science, and a doctorate degree in clinical psychology. He has obtained certification in neuropsychological assessment. He maintains a private practice as a rehabilitation neuropsychologist and performs neuropsychological assessments of adults. Dr. Filanosky performed an Independent Medical Evaluation (IME) of Respondent. Dr. Filanosky interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed medical records, conducted a mental status examination of Respondent and reviewed the results of multiple neuropsychological tests administered to Respondent. Dr. Filanosky opined that Respondent was not substantially incapacitated by reason of cognitive impairment, including lack of concentration, memory loss or problems with language perception or communication.

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 January 14, 2020. Respondent represented herself at the hearing. Respondent DPH 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.

Testimony from Respondent's husband and medical records established that, on November 18, 2017, Respondent experienced an episode of cardiac arrest due to ventricular fibrillation (irregular or ineffective contractions of the ventricles). Respondent was unresponsive to her husband's verbal and physical efforts. Respondent's husband called 911 and began CPR. Paramedics arrived, stabilized Respondent and transported her to the nearest hospital. At the hospital, a CT scan of Respondent's brain was performed, with results interpreted as being normal. As part of her course of treatment at the hospital, an intracardiac defibrillator was implanted in Respondent.

Following her release from the hospital, Respondent was seen by cardiologists at Kaiser. In January 2018, testing (echocardiogram) demonstrated that Respondent's left ventricular size was normal and that there was normal left ventricular function (pumping of blood by the muscle). Pulmonary artery pressure and right heart filling pressures were normal.

Respondent testified at the hearing. She stated that her cardiac issues are "stable." She stated that she believes that she has physically recovered. She has not experienced any significant heart related events since three episodes of non-sustained ventricular tachycardia (rapid heart rate) in March, April, and May 2018.

At the hearing, Dr. McHenry testified in a manner consistent with his examination of Respondent and the IME report. Dr. McHenry noted that the medical records show that Respondent has not had a recurrent episode of sustained arrhythmia (abnormal rhythm) since the cardiac arrest. Dr. McHenry performed another echocardiogram, with a repeat of "normal" findings or results. Dr. McHenry further observed that the implanted defibrillator has adequately and properly performed to its intended purpose, protecting Respondent from a recurrence of ventricular tachycardia. Dr. McHenry's medical opinion was that Respondent was not and is not substantially incapacitated from performing the usual and customary duties of an AGPA with Respondent DPH because of a current cardiac condition.

Respondent did not call any physicians or other medical professionals to testify on her behalf. Respondent testified that she believes that she has sustained residual impairments to her cognitive abilities because of the cardiac arrest episode.

Respondent claimed memory loss, inability to concentrate, problems with speaking and being easily distracted. Respondent testified that she does not feel that she is capable of returning to her AGPA position.

The medical records indicate that, within four days following the cardiac arrest, Respondent's memory was noted to be improved. In April 2018 - four months after the event - Respondent was complaining of memory loss. At that time, a Dr. Lanni conducted a "full battery" of neuropsychological testing on Respondent. Respondent's performance on the tests was described as slowed, but overall accurate. Dr. Lanni noted, "Otherwise her ability to learn and recall new information, executive functions, language, visual spatial skills, and basic auditory and visual attention are within normal limits and comparable to her baseline."

Dr. Filanosky conducted the same "full battery" of neuropsychological tests as part of his evaluation of Respondent. As he detailed in his IME report and in his testimony at the hearing, the test results show that Respondent's verbal comprehension abilities and working memory/concentration are "solidly average." Respondent's general intellectual ability is high average. Her visual attention for discrimination of detail was average and within normal limits. Her ability to listen and repeat back strings of numbers of increasing complexity and auditory performance was average.

Dr. Filanosky conducted a mental status exam as part of his evaluation of Respondent. He noted that her cognition appeared "grossly intact" and that her judgment and insight appeared "to be within broadly normal limits."

Dr. Filanosky opined that Respondent "more likely than not has some mild, inconsistent residual cognitive symptoms" resulting from her cardiac arrest that appear to be more "language based and some subtle communication difficulties." In his opinion, "These deficits, where present, can be characterized typically as a drop from superior to high average or from high average functioning to average functioning." Dr. Filanosky stated that, in his opinion, Respondent is not substantially incapacitated from performing the usual and customary duties of her AGPA position due to any residual cognitive condition.

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 present competent medical evidence in support of her claimed disability. The ALJ found the contents of both IME's written reports and their testimony at hearing to be detailed, comprehensive and persuasive.

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.

March 18, 2020

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Rory J. Coffey  
Senior Attorney