

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Debra S. Harder (Respondent) applied for industrial disability retirement based on psychological conditions. By virtue of her employment as a Clinical Social Worker for Respondent Deuel Vocational Institution, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

Respondent filed an application for service pending industrial disability retirement on October 30, 2018, and has been receiving benefits since November 1, 2018.

As part of CalPERS' review of Respondent's medical condition, Roy L. Curry, M.D., a board-certified Psychiatrist, performed an Independent Medical Examination (IME). Dr. Curry interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed her medical records, and administered psychological testing. Dr. Curry opined that Respondent was not substantially incapacitated because her history, mental status, and psychological testing do not support incapacity.

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 (OAH). A hearing was held on February 18, 2020. Respondent was represented by counsel at the hearing. Respondent CDCR did not appear at the hearing.

Copies of written job descriptions for the position of Clinical Social Worker for Respondent CDCR were received into evidence and considered by the ALJ.

At the hearing, Dr. Curry testified in a manner consistent with his examination of Respondent and the IME report. Dr. Curry testified that Respondent's mental status, psychological testing, and work history do not support incapacity. He testified that although Respondent exhibits some dysphoria, Respondent is resilient and has excellent coping abilities. Dr. Curry opined that Respondent was able to perform her job duties as a Clinical Social Worker for Respondent CDCR. Therefore, Respondent is not substantially incapacitated.

Respondent testified on her own behalf about her working conditions and her symptoms and limitations. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from her 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 as follows:

[Respondent] did not establish that she was substantially incapacitated for the performance of her former duties as a clinical social worker for [Respondent CDCR] on the basis of a psychological condition on October 30, 2018, when she filed her application for industrial disability retirement. The opinion of Dr. Curry was persuasive and unrebutted by evidence competent to support a finding of disability.

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 that the definition of the term "incapacitated for the performance of duty" be corrected from "disability of permanent or extended and uncertain duration . . . on the basis of competent medical opinion" to "disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death . . . on the basis of competent medical opinion" on page 7, paragraph 2, line 4 of the Proposed Decision.

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

April 22, 2020

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Attorney