

ATTACHMENT B

STAFF'S ARGUMENT

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

Tawanna R. McFarland (Respondent) worked as an Office Technician for Respondent California State Prison - Solano, California Department of Corrections and Rehabilitation (CDCR.) By virtue of her employment, Respondent was a state industrial member of CalPERS.

On April 17, 2019, Respondent applied for service pending disability retirement based on her alleged orthopedic (left & right knee, lower back) conditions.

As part of CalPERS' review of Respondent's medical condition, Howard Sturtz, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME.) Dr. Sturtz interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints and reviewed her medical records. Dr. Sturtz opined that Respondent is not substantially incapacitated from performing her job duties as an Office Technician with CDCR.

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 as an Office Technician.

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 June 18, 2020. Respondent represented herself at the hearing. Ricardo Delacruz was present as an observer for Respondent CDCR.

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.

CalPERS presented the testimony of Dr. Sturtz who examined Respondent on August 7, 2019. Dr. Sturtz testified about his examination, his review of Respondent's medical records, his IME reports dated August 7, 2019, August 27, 2019 and September 12, 2019.

In his August 7, 2019 report and in his testimony, Dr. Sturtz summarized Respondent's medical records. Dr. Sturtz testified that an MRI in May 2017 showed that Respondent had a medial meniscal tear in her right knee. Respondent had arthroscopic surgery on June 16, 2017, followed by therapy. Dr. Gomez, who treated Respondent at the time, saw Respondent twice in June 2017, and once each month from August to November 2017, and once in January 2018, for progress reports.

On June 6, 2018, Respondent sought treatment from Dr. Gomez for back pain that first occurred when she fell down several days after her right knee surgery. Dr. Gomez referred Respondent to Dr. Razi for follow-up. Dr. Sturtz testified that Dr. Razi recommended modified work duty for Respondent in an August 2018 report, but he did not include any restrictions on Respondent for sitting, standing or walking.

On April 19, 2019, Dr. Razi requested an MRI of Respondent's left knee. The MRI of her left knee, dated May 21, 2019, showed mild degenerative changes of the joint spaces, a tiny tear of the meniscal capsular junction of the medial meniscus, a partial tear and thickening of the ACL, a moderate sprain and thickening of the proximal MCL, insertional tendinosis of various tendons about the knee, a moderate joint effusion and large popliteal cyst.

Dr. Sturtz opined, in his August 7, 2019 report, that Respondent had an actual impairment in the left knee that rises to the level of substantial incapacity; however, the incapacity was temporary. Dr. Sturtz based his opinion on the 2019 MRI of Respondent's left knee, the painful crepitus on his examination of Respondent and an inaccurate description of Respondent's job duties. Dr. Sturtz opined that Respondent would be incapable of prolonged standing and walking up to three hours, so she would be relegated to a strictly sedentary position.

Dr. Sturtz issued a supplemental report on August 27, 2019, to provide clarification as to when Respondent's disability began. In the supplemental report, Dr. Sturtz stated that Respondent's disability began on January 5, 2019.

Dr. Sturtz issued a second supplemental report on September 12, 2019, to address Respondent's right knee and lower back conditions. Dr. Sturtz opined that Respondent does not have an "actual orthopedic impairment regarding the right knee and lower back."

At the hearing, Dr. Sturtz explained that he changed his opinion regarding Respondent's incapacity after reviewing the written job Duty Statement and Physical Requirements for the position of Office Technician. Dr. Sturtz previously relied on Respondent's own description of her job which she claimed required a lot of walking, bending, pulling, pushing and handling heavy cases of paper. The written job Duty Statement and Physical Requirements of the Office Technician position, however, shows that Respondent's job is mostly sitting with minimal physical activity in the range of hours that did not require sitting. Dr. Sturtz opined that Respondent's left knee condition did

not render her substantially incapacitated from performing her job duties as an Office Technician.

Respondent testified on her own behalf regarding her knee. She testified that she had knee surgery for a torn meniscus on December 20, 2019. She did not present any documents at the hearing. Respondent did not call any physicians or other medical professionals to testify.

Respondent also called Sherri Stith, a family friend, to testify on her behalf. Ms. Stith sought to verify Respondent's surgeries and limited activities during the course of daily living. Although Ms. Stith worked in a hospital in the past, she has no medical background and therefore could not testify as a medical expert.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that despite the changes in his reports, based on his examination of Respondent on August 7, 2019, the opinion of Dr. Sturtz was credible, reliable and persuasive as a competent medical opinion required by Government Code section 21154. The ALJ explained that Respondent presented no competent direct medical evidence to contradict the opinion of Dr. Sturtz. Respondent has not met her burden of proof to show that she was substantially incapacitated from performing the usual duties of her Office Technician position at the time she applied for disability retirement.

The ALJ concluded that Respondent is not eligible for 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 replacing, "disability of permanent or extended and uncertain duration" to "disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death" on page eight, paragraph four of the Corrected Proposed Decision.

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

September 16, 2020

Austa Wakily
Senior Attorney