

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Evelina Ortega (Respondent) worked as a Senior Office Technician for Respondent Los Angeles Unified School District (LAUSD). By virtue of her employment, Respondent was a school miscellaneous member of CalPERS.

Respondent filed an application for disability retirement based on a rheumatological (rheumatoid arthritis) condition on June 27, 2019.

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

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 is 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 April 22, 2021. Respondent represented herself at the hearing. Respondent LAUSD 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.

At the hearing, Dr. La testified in a manner consistent with his examination of Respondent and the IME report. Dr. La testified that Respondent was diagnosed with rheumatoid arthritis in 2015 based on positive serologies and joint symptomology. Her medical records from December 8, 2014 revealed evidence of joint pain involving the fingers, with mild swelling of the feet. Dr. La testified that Respondent would have had a hard time performing her job duties since that time.

Dr. La further testified that Respondent has pain and stiffness involving her hands, and she has impingement and pain in the left shoulder that affects her ability to lift 25 pounds. Notably, Dr. La testified that there was no evidence of rheumatoid joint deformities involving the hands, which, if present, would lead to a more permanent disability. Since Respondent does not have rheumatoid deformities, her function status can be preserved with adequate medical management of rheumatoid arthritis. Dr. La explained that Respondent's symptoms of joint pain involving the neck, fingers and hands, related to rheumatoid activity can be improved with appropriate management. Dr. La opined that Respondent's incapacity is temporary, expected to last six months.

At the hearing, Respondent testified that she began to experience pain in 2014, which interfered with her ability to stand or sit for prolonged periods and it affected her ability to complete many of her work tasks, including filing. Respondent testified that she tried multiple medicines to treat her condition, but the medications either had intolerable side effects or lost their effect. Respondent's last day of employment with LAUSD was March 24, 2015.

Respondent continues to see her doctor on a yearly basis and continues to take some medication intended to control the symptoms of her rheumatoid arthritis but at half the normal dose because she claims it impacts her immune system, and she fears contracting the COVID-19 virus.

Respondent has not worked in any capacity since leaving LAUSD. She states she can perform some aspects of self-care and routine household tasks, but her symptoms, particularly the associated pain, can be so intolerable she requires a great deal of assistance from her grown children who reside with her. Respondent did not present any medical evidence, including no testimony from a medical professional.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. At the hearing, Dr. La confirmed Respondent's stated medical condition; however, he also opined that her condition is temporary, not expected to last longer than six months, and can be controlled through ongoing medicinal management by her physicians. Thus, by his determination, the condition does not meet section 20026's required element of an expected 12 month or longer duration. Respondent did not present any medical evidence, including any to establish that her condition is likely to continue for at least 12 months. 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 that the words, "state miscellaneous" in paragraph one on page two should be changed to "school miscellaneous," and the word "industrial" be deleted from page two in the Issue section and page ten in the Order of the Proposed Decision section.

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

June 16, 2021

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Senior Attorney