

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Angela Aceves (Respondent) applied for disability retirement based on neurological (multiple sclerosis, cognitive impairment) conditions. By virtue of her employment as an Administrative Associate III, Instruction (also referred to as Administrative Assistant III) for Respondent Riverside County Schools - Mount San Jacinto Community College District (Respondent District), Respondent was a local miscellaneous member of CalPERS. Respondent filed an application for disability retirement on April 04, 2020.

As part of CalPERS' review of Respondent's medical condition, Khaled Anees, M.D., a board-certified neurologist, performed an Independent Medical Examination (IME). Dr. Anees 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 comprehensive physical examination. Dr. Anees opined that Respondent is not substantially incapacitated from the performance of her Administrative Associate III 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 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 24, 2022. Respondent was represented by counsel at the hearing. Respondent District did not appear at the hearing, and the case proceeded as a default under Government Code section 11520 as to the Respondent District only.

At the hearing, Dr. Anees testified in a manner consistent with his examination of Respondent and his IME report. Dr. Anees testified that Respondent has a history of Multiple Sclerosis (MS) with some cognitive symptoms and complaints. However, as to objective findings, Dr. Anees found that Respondent displayed only some reduced sensation in her left lower extremity. The results of the rest of her examination – reflexes and cranial nerve examination – were entirely normal. Dr. Anees found no pathological reflexes to indicate nerve damage. Dr. Anees found Respondent's cognitive function to be within normal limits, and that she was alert and oriented. Although Dr. Anees agreed that Respondent may feel fatigued easily, he opined that her reported fatigue did not indicate that she is unable to perform her job duties.

Dr. Anees opined that the objective test results do not correlate with Respondent's subjective complaints. Therefore, Dr. Anees' competent medical opinion is that Respondent is not substantially incapacitated from performing the usual duties of her position as an Administrative Associate III.

Respondent testified on her own behalf that her neurological conditions have caused stuttering and loss of memory. Respondent testified that she is unable to calculate and balance the District's budget, which is an essential part of her job duties. Respondent did not call any physicians or other medical professionals to testify on her behalf. Respondent submitted a number of medical documents to support her application. These documents were admitted as administrative hearsay. Hearsay evidence may be used to supplement or explain other evidence, but is not sufficient in itself to support a finding. (Gov. Code § 11513(d).)

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 holds the burden of proof and failed to offer sufficient competent medical evidence to establish that she is substantially incapacitated from performing the usual duties of her position as an Administrative Associate III. The ALJ found that the only competent medical opinion submitted was that of Dr. Anees, and that Dr. Anees' opinion was persuasive and supported by independent clinical findings. For those reasons, the ALJ found that Respondent failed to establish that she was disabled from performing her usual duties as an Administrative Associate III, and denied her appeal.

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 "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" in paragraph 2., under the Legal Conclusions section, on page 15 of the Proposed Decision.

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

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