

ATTACHMENT B

STAFF'S ARGUMENT

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

Veronica D. Caguioa (Respondent) applied for disability retirement based on orthopedic (carpel tunnel syndrome and bilateral upper extremities) conditions. By virtue of her employment as an Office Assistant III for Respondent County of Monterey Sheriff Office (Respondent Sheriff) and County of Monterey (Respondent Monterey), Respondent was a local miscellaneous member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Don T. Williams, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Williams interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Williams opined that Respondent is not substantially incapacitated for the performance of her job duties as an Office Assistant III.

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 their 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 Assistant III. 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 March 21, 2022. Respondent represented herself at the hearing. Respondent Sheriff did not appear at the hearing and the matter proceeded as a default against Respondent Sheriff pursuant to Government Code section 11520(a).

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. Williams testified in a manner consistent with his examination. Dr. Williams opined that Respondent has mild bilateral carpal tunnel syndrome; but that she does not have an impairment that rises to the level of substantial incapacity to perform her usual job duties. Dr. Williams found her wrist motion to be normal, with 80 degrees extension, and 80 degrees of flexion. He stated that her subjective complaints continue to be numbness in the median distribution on both hands with some pain radiating to the upper arms. Dr. Williams' objective findings show a mild positive Tinel, but he believes that Respondent extended poor effort in grip strength tests. Dr. Williams found no tenderness over the lateral epicondyles; and found that she maintains full

range of motion of the shoulders, elbows, wrists, and hands. EMG nerve conduction showed only a mild borderline carpal tunnel bilaterally. Dr. Williams opines Respondent is not substantially incapacitated, and that her job does allow a variety of activity which allows changing positions and stretches to reduce any potential for nerve compression.

Respondent testified on her own behalf that she is not capable of performing her job duties due to the pain and numbness she suffers in her hands, and she described difficulties in completing her daily activities due to pain and numbness. She is unable to repetitively grasp or lift more than ten pounds. She described an incident where she fell on the stairs in her home. She was walking down the stairs holding a small box when she felt an “electric shock” in her hand and lost strength. She attempted to grab the box before it hit the stairs and fell, bruising her face. She is unable to cook because after cutting or chopping for 5 minutes her hands lose strength and become painful. She cannot visit her daughters because she is unable to grip the steering wheel for a two-hour drive.

Respondent did not call any physicians or other medical professionals to testify, but submitted medical records to document her orthopedic conditions. The records show that Respondent was treated with medication and physical therapy. She was placed on modified duty with restrictions that included prohibitions against lifting more than 10 pounds, repetitive bending or stooping, forceful or repetitive work at or above shoulder level, forceful grasping of either hand, repetitive pushing or pulling, and working more than three days per week. Respondent underwent an electrodiagnostic study of her hands that showed she suffered from mild carpal tunnel syndrome. She has consistently complained of pain and numbness in her hands.

On May 22, 2019, orthopedic surgeon Ramon L. Jimenez, M.D., performed a qualified medical evaluation (QME) in conjunction with Respondent’s workers’ compensation claim. Dr. Jimenez opined that Respondent had reached maximum medical improvement regarding her orthopedic conditions, and that her condition was permanent. Dr. Jimenez stated Respondent should refrain from pushing or pulling, repetitive grasping or gripping or torquing with her right upper extremity, and that she should not lift more than 10 pounds.

On April 8, 2021, Respondent’s treating physician Dr. Victor Li prepared a physician’s report on disability to support her disability application. In the report, Dr. Li diagnosed Respondent with carpal tunnel syndrome in both wrists and lateral epicondylitis in both elbows. Dr. Li stated Respondent was substantially incapacitated from performance of her usual duties and that the incapacity was permanent. Dr. Li stated that Respondent was precluded from lifting more than 10 pounds, working more than three days per week, could not perform forceful and repetitive work at or above the shoulder, and could not work without an assistant.

During the hearing, Respondent testified that she was mistakenly evaluated in the position of Office Assistant III, because she actually worked as a Mailroom Clerk for the duration of her employment with Respondent Sheriff and Respondent Monterey. Since Dr. Williams’ IME of Respondent was based on her job duties as an Office Assistant III,

the hearing was continued so she could be reevaluated using the job duties of a Mailroom Clerk.

Dr. Williams reevaluated Respondent's claim using duty statements for her job as Mailroom Clerk, as well as additional medical records provided at hearing. After review of all new evidence, Dr. Williams did not change his medical opinion that Respondent is not disabled. Dr. Williams states the new records do not show major pathology. He found minor carpal tunnel syndrome, and no evidence that she was substantially incapacitated to perform her usual job duties as Mailroom Clerk.

A second day of hearing was held on May 19, 2022. Dr. Williams testified as to his review of the medical records and his examination. Dr. Williams remained of the opinion that Respondent was not substantially incapacitated from performance of her duties as a Mailroom Clerk at the time she filed her application for disability retirement.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent's appeal. The ALJ found that the opinions of Drs. Li and Jimenez were more persuasive than that of Dr. Williams. The ALJ found that the medical evidence established that Respondent's bilateral hand conditions render her substantially incapacitated for the performance of her usual duties as a Mailroom Clerk. The ALJ found that while Dr. Williams acknowledged Respondent's carpal tunnel syndrome, he failed to address her permanent work restrictions.

The ALJ found that multiple medical providers have imposed permanent work restrictions on Respondent that are incompatible with her usual duties as a Mailroom Clerk. For example, Dr. Jimenez opined that Respondent's orthopedic conditions had reached maximum medical improvement in 2019. Dr. Li treated Respondent for months and opined that she was substantially incapacitated for the performance of her job duties. The ALJ concluded that Respondent is incapacitated for the performance of her duties as a Mailroom Clerk for the County of Monterey Sheriff's Office within the meaning of Government Code section 20026, by reason of her orthopedic conditions.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." Respondent County of Monterey needs to be added as a Respondent.

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

September 21, 2022

Nhung Dao
Attorney