

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Paige Roderick (Respondent) was employed by Kern Valley State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR) as a Correctional Sergeant. By virtue of her employment, Respondent was a state safety member of CalPERS. On March 23, 2009, Respondent fell on her right shoulder while responding to an alarm at work which resulted in the separation of her acromioclavicular (AC) joint. On November 19, 2010, Respondent applied for Industrial Disability Retirement (IDR) on the basis of an orthopedic (right shoulder) condition. Respondent's application was approved, and she retired on October 9, 2010, at age 28.

The Public Employees' Retirement Law (PERL) authorizes the CalPERS Board of Administration (Board) to audit disability retirement cases, including the authority to require disability recipients to undergo medical evaluations at any time prior to reaching the minimum age for voluntary service retirement. CalPERS administers these audits to determine whether disability retirement recipients still meet the qualifications necessary to continue receiving benefits. When a disability retiree is no longer substantially incapacitated from the performance of their usual duties, and is still under the minimum age for retirement, the retiree is reinstated to their former position. To remain eligible for disability retirement, competent medical evidence must demonstrate that the individual remains substantially incapacitated from performing their usual job duties.

On June 28, 2021, CalPERS notified Respondent that she would be reevaluated to determine whether she remains substantially incapacitated. Respondent was sent for an Independent Medical Examination (IME) to be completed by Don Williams, M.D., a board-certified Orthopedic Surgeon. Dr. Williams interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed medical records, and performed a comprehensive physical examination. Dr. Williams opined that Respondent is no longer substantially incapacitated to perform her usual job duties.

After reviewing all medical documentation and the IME report, CalPERS determined that Respondent was no longer substantially incapacitated and should be reinstated to her former 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 5, 2023. Respondent represented herself at the hearing. Respondent CDCR did not appear. The ALJ found that the matter could proceed as a default against Respondent CDCR, pursuant to Government Code section 11520, subdivision (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, 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 of Respondent and his IME report. Dr. Williams found Respondent to have full strength and functional range of right shoulder motion, with the rotator cuff intact, and no arthritis of the glenohumeral joint. Dr. Williams opined that after two surgeries, Respondent has “sufficiently recovered and can now perform her usual duties.” Dr. Williams testified that in his orthopedic experience, “AC separations do not cause long term disability,” and that he has seen “AC separation in a lot of athletes” where they are “disabled for a while and are able to return to their normal functions.” Dr. Williams’ objective findings show that after 14 years, Respondent now has a stable healed AC joint that is no longer displaced, and she has a functional range of motion. Dr. Williams’ medical opinion is that Respondent can now perform the duties of her former position with CDCR and is no longer substantially incapacitated.

Respondent testified that she has no strength in her right shoulder joint and her right shoulder is “bothering [her] really bad.” She cannot swing a baton and would not be able to protect herself or others at work. She stated that “more medical stuff needs to happen before they say” she can return to work, and that her shoulder hurts, it does not feel normal, and it is not right that she must return to work. Respondent did not call any physicians or other medical professionals to testify on her behalf.

The ALJ found that CalPERS bears the burden of proving that Respondent is no longer substantially incapacitated from performing the usual duties of her position, and that CalPERS met its burden. After considering all of the evidence and arguments made by the parties at the hearing, the ALJ denied Respondent’s appeal. The ALJ found that Respondent did not introduce any competent medical opinion to support her claim of continued disability, and she did not provide any reliable evidence to refute Dr. Williams’ competent medical opinion. The ALJ found Respondent’s complaints of continued pain in her right shoulder and fears of future injury were not supported by any objective findings and were insufficient to establish substantial incapacity.

At its March 15, 2023 meeting, the Board voted to adopt the Proposed Decision as its own Decision. Respondent now petitions the Board to reconsider its decision, raising the same arguments that were considered and rejected by the ALJ after hearing (i.e., that she “has chronic shoulder pain and weakness,” that “her shoulder is not better by any means,” that she “does not believe she is capable of performing all of her job duties,” that she does not believe she can “defend herself if needed,” and that Dr. Williams’ examination was defective). Respondent also argues that a portion of her disability rating percentage approved for her workers’ compensation claim was for depression and anxiety, and that CalPERS did not reevaluate her for psychological condition. This is true. It is also true that Respondent has never claimed disability based on the psychological condition she is now asserting. She has consistently claimed disability due to orthopedic condition (right shoulder). Further, disability rating percentages are related to Workers’ Compensation claims, and do not bear on determinations of CalPERS disability retirement.

Respondent has not presented any new evidence that would alter the previous analysis of the ALJ. Respondent has not introduced any competent medical opinion or evidence to support her claim of continued disability. The Proposed Decision that was adopted by the Board at the March 15, 2023, meeting was well reasoned and correctly decided based on the credible evidence presented at hearing.

For all the above reasons, staff argues that the Board should deny Respondent's Petition for Reconsideration.

April 18, 2023

NHUNG DAO
Attorney