

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Tamara Dunn (Respondent) petitions the CalPERS Board of Administration (Board) to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated November 1, 2022. For reasons discussed below, staff argues the Board should deny the Petition for Reconsideration (Petition) and uphold its decision.

Respondent was employed as an Administrative Analyst/Specialist at CSU, Sacramento. By virtue of her employment, Respondent was a state miscellaneous member of CalPERS.

On July 14, 2021, Respondent applied for disability retirement based on orthopedic (bilateral wrists, fingers, bilateral hands, left arm) conditions. As part of CalPERS' review of Respondent's medical condition, Harry Khasigian, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Khasigian interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Khasigian opined that Respondent's basis for disability retirement appeared to be a high level of subjective complaints without any correlation of objective impairment. Dr. Khasigian found Respondent's claimed conditions to be "modest" and she presented during examination as "normal." Dr. Khasigian opined that Respondent does not have an impairment that amounted to a substantial incapacity to perform her job duties as an Administrative Analyst/Specialist.

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. The competency of the medical opinion requires the physician's knowledge and application of the CalPERS disability standard to the applicant's job duties.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of her position due to her orthopedic conditions. On October 6, 2021, CalPERS notified Respondent of its determination.

A hearing on Respondent's appeal was held on October 5, 2022. The resulting Proposed Decision was adopted by the Board on January 17, 2023. Respondent submitted a Petition on February 7, 2023, which brings forth the same arguments already presented and denied by the Administrative Law Judge (ALJ) in the Proposed Decision.

Respondent argues that the ALJ failed to consider the medical evidence presented and failed to consider her job duties. Respondent is incorrect. The ALJ reviewed her evidence and found that none of the medical reports were supported by objective

findings. Additionally, none of the doctors testified on Respondent's behalf at the hearing, so their reports were admitted as administrative hearsay. Hearsay may be used to supplement or explain other evidence, but cannot be relied upon to support any findings as to Respondent's claimed medical condition. The opinion rendered by the IME, Dr. Khasigian, provided a detailed analysis and assessment of the essential job duties, concluding that there were no objective findings to support a finding of substantial incapacity. The ALJ found the evidence presented by CalPERS to be more persuasive than the evidence submitted by Respondent.

Finally, Respondent argues that various Qualified Medical Evaluation Reports produced for her workers' compensation claims establish substantial incapacity. Respondent is mistaken. Receipt of any type of disability in a workers' compensation proceeding does not establish qualification for disability retirement because the standards of disability are different. Workers' compensation appeals concern whether an employee suffered any job-related injury, and if that injury resulted in some permanent residual loss. Retirement boards on the other hand, focus on whether an employee has suffered an injury or disease of such magnitude and nature that she is substantially incapacitated from performing her job duties.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the January 17, 2023, meeting was well-reasoned and based on the credible evidence.

For all the foregoing reasons, staff argues that the Board should deny the Petition for Reconsideration and uphold its decision.

March 15, 2023

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