

ATTACHMENT B

STAFF'S ARGUMENT

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

Karl Tang (Respondent) applied for industrial disability retirement based on an orthopedic (right hand) condition. By virtue of employment as a Police Sergeant for California State University at San Francisco (Respondent SFSU), Respondent was a state safety 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 his work history and job descriptions, obtained a history of his past and present complaints, reviewed his medical records, and performed a thorough physical examination of Respondent. Dr. Williams opined that Respondent was not substantially incapacitated to perform his usual duties as a Police Sergeant.

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 his position. Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on February 7, 2023. Both Respondent and Respondent SFSU appeared and were represented by counsel at the hearing.

At the hearing, Dr. Williams testified in a manner consistent with his examination of Respondent and the IME report. Dr. Williams believes Respondent is not substantially incapacitated because he is able to perform the usual and customary duties of a Police Sergeant. Dr. Williams found Respondent's grip strength to be within normal range, that a review of Respondent's x-ray and MRI records show his fourth metacarpal fracture had healed, and that he maintains full motion of the affected joints. Furthermore, Respondent can do most activities of daily living. Under these circumstances, Dr. Williams considers Respondent not substantially incapacitated.

Respondent testified at hearing regarding his orthopedic condition, medical treatment, and work history. On September 13, 2017, Respondent injured his right hand when he fell off his patrol bicycle. He tried various treatments including physical therapy, exercise, medication, and acupuncture to treat his right hand; however, he never regained function in his right hand, and his symptoms did not improve such that he could perform the full duties of a Police Sergeant. Respondent continues to experience symptoms in his right hand including throbbing pain, shooting pain, soreness, stiffness,

and cramping. In addition to his supervisory duties as a Police Sergeant, Respondent is required to perform the regular duties of a police officer, including the requirement to carry and operate firearms, and to maintain the safety of students and staff on campus.

The day after his fall, Respondent began treatment with Dr. Sandra Lee, M.D. at Kaiser Permanente. Dr. Lee has treated Respondent continuously since the accident. Dr. Lee testified at hearing that Respondent's x-rays showed fourth metacarpal fracture (right hand). Her diagnoses included right fourth metacarpal shaft fracture, joint impairment and abnormal joint motion. Although Dr. Lee initially treated Respondent relating to his workers' compensation claim, she opined in her Physician's Report on Disability to CalPERS that he is substantially and permanently incapacitated from performance of his usual duties of the position of Police Sergeant. She testified that Respondent is unable to lift/carry/push/pull more than 20 pounds, use his right hand for more than 75% of his work shift, and cannot engage in prolonged gripping and grasping with his right hand. Dr. Lee opined that even after an injury such as Respondent's fracture heals, people can have persistent symptoms related to the injury. She also noted that Respondent was experiencing cramping in his right hand, and that in her medical opinion, Respondent should not be allowed to operate a firearm. She is concerned regarding Respondent's ability to act as a peace officer in an emergency situation.

Respondent also called Reginald Parsons (Chief of the SFSU Police Department), Ingrid C. Williams (Vice President of Human Resources at SFSU) to testify on his behalf. Chief Parsons opined that it would be a huge risk to life and safety if Respondent were to be reinstated to his position. Ms. Williams opined that it would be problematic for the university if the application is denied and Respondent is reinstated at SFSU because his permanent work restrictions create a risk to the safety of the students, faculty, staff, and public, and that it is a "liability" issue because Respondent is unable to safely discharge his duties as a Police Sergeant.

After considering all of the evidence introduced, as well as arguments made by the parties, the ALJ granted Respondent's appeal. The ALJ found Dr. Williams' medical opinion to be less persuasive than Dr. Lee. The ALJ found Dr. Lee more credible because she treated Respondent continuously since 2017 and persistently noted his inability to perform the usual and customary duties of his position in her medical reports. For these reasons, the ALJ found that Respondent met his burden of proof to establish by a preponderance of the evidence that he was substantially incapacitated for the performance of his usual duties as a Police Sergeant.

The ALJ concluded that Respondent is eligible for industrial disability retirement because the medical evidence establishes that at the time of his application, Respondent was substantially incapacitated for the performance of his usual and customary duties as a Police Sergeant for SFSU, based on his orthopedic (right hand) condition.

Pursuant to Government Code section 11517, subdivision (c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." To

avoid ambiguity, staff recommends correcting the language referenced in Government Code section 20026 from “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, page 18 of the Proposed Decision.

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

April 18, 2023

Nhung Dao
Attorney