

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Tracy Mathews (Respondent) applied for disability retirement based on internal (Epstein Barr Virus/post viral syndrome, anemia, COVID-19, and chronic fatigue syndrome) conditions. By virtue of her employment as a Service Coordinator for the Redwood Coast Regional Center (Respondent RCRC), Respondent was a local miscellaneous member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Scott T. Anderson, M.D., a board-certified Rheumatologist and Internist, performed an Independent Medical Examination (IME). Dr. Anderson 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 thorough physical examination. Dr. Anderson opined that Respondent is not substantially incapacitated from performing her duties as a Service Coordinator.

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. 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 remote hearing was held on November 1, 2023. Respondent represented herself at the hearing. Nichole Hayden, Director of Human Resources, appeared on behalf of Respondent RCRC.

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. Anderson testified in a manner consistent with his examination of Respondent and the IME report. Dr. Anderson specifically opined Respondent does not have an actual and present internal condition in the form of anemia, chronic fatigue syndrome, or COVID-19 that arises to the level of substantial incapacity to perform her usual job duties. Dr. Anderson emphasized at hearing that Respondent showed no signs of being anemic. He found no documentation of anemia reproducible in the records, and opined that Respondent does not suffer from any musculoskeletal or neurological condition that would cause her to be fatigued and unable to function.

Dr. Anderson states, while Respondent may have been exposed to COVID-19 in the past, she shows no indication of residual adverse consequences. Dr. Anderson diagnosed Respondent with “mild generalized deconditioning.” At hearing, he explained that means a loss in muscle mass due to disuse and lack of physical activity rather than a disease. He concluded that Respondent was not substantially incapacitated from the performance of her usual job duties.

Based on his findings, Dr. Anderson concluded Respondent “can perform all job duties outlined under the occupational history without limitation with respect to the claims of anemia, chronic fatigue, and COVID-19 which led to this assessment.” He acknowledged her subjective complaints, but noted they were “completely out of proportion to the physical findings of examination.” He believed Respondent exaggerated her complaints and explained that, when reaching his conclusions, he considered Respondent’s subjective complaints and the objective findings in her medical reports. Dr. Anderson wrote: “The findings that lead me to the conclusion that she is not substantially incapacitated include a lack of medical documentation of substantial incapacity, physical examination inconsistent with substantial incapacity, and lack of a specific diagnosis that could cause substantial incapacity.”

Respondent testified on her own behalf that she believes Dr. Anderson failed to appreciate the full extent of her job duties as a Service Coordinator. She noted that to maintain a caseload of approximately 85 clients, she had to travel to clients’ homes, meet with them and their families, help formulate individualized program plans, help clients navigate their receipt of supports and services, and communicate with her coworkers about her clients’ changing circumstances. In her opinion, her job was “far more involved and demanding than Dr. Anderson apparently understood.” She believes Dr. Anderson relied on “conventional Western medical science to debunk” the opinions of her naturopath and physician’s assistant.

Respondent did not call any physicians or other medical professionals to testify on her behalf, but did submit medical records to support her appeal, which included progress notes from various treating individuals. However, none of these medical records addressed Respondent’s capacity to perform her job duties as a Service Coordinator. Respondent’s medical records were admitted as administrative hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but is not sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

After considering all the evidence introduced, as well as arguments made by the parties, the ALJ denied Respondent’s appeal. The ALJ found that Respondent bears the burden to establish, through competent medical evidence, that she was substantially incapacitated from performing her usual job duties based on her conditions at the time of her application, but she failed to do so. Rather, the ALJ found the persuasive medical evidence established that Respondent’s conditions did not, at the time of her application, substantially disable her from performing her usual job duties as a Service Coordinator.

The ALJ found Dr. Anderson's conclusions were credible and supported by his experience and training, especially in the fields of internal medicine and rheumatology. The findings and opinions contained in the medical records Respondent submitted to CalPERS were less persuasive than Dr. Anderson's. Further, the ALJ found Dr. Anderson testified at hearing consistently with his written reports and was able to explain his reasons for not only his own findings, but also for disagreeing with Respondent's medical providers. In contrast, Respondent's medical providers did not testify at hearing, were not subject to cross examination, and did not respond to Dr. Anderson's critiques of their conclusions. When weighed against one another, the ALJ found Dr. Anderson's findings and opinions more persuasive than those of Respondent's medical providers.

The ALJ concluded that Respondent is not eligible for disability retirement. When all the evidence is considered, Respondent did not prove through competent medical evidence that her Epstein Barr Virus/post-viral syndrome, anemia, COVID-19, or chronic fatigue syndrome incapacitated her from performing her job duties as a Service Coordinator at the time she filed her application. Therefore, her application must be denied.

In accordance with 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 replacing the term "pursuant" with "subject" in sentence 1, paragraph 1, under the Legal Conclusions section on page 12 of the Proposed Decision.

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

January 16, 2024

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Nhung Dao  
Attorney