

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Christina S. Medina (Respondent) worked as a Dental Assistant for California State Prison - Solano, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of her employment, Respondent is a state safety member of CalPERS.

On November 27, 2019, Respondent applied for industrial disability retirement based on her orthopedic (collar bone, right shoulder, and bilateral carpal tunnel) conditions.

As part of CalPERS' review of Respondent's medical condition, Robert K. Henrichsen, M.D., a board-certified orthopedic surgeon, performed an Independent Medical Examination (IME). Dr. Henrichsen interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Henrichsen opined that Respondent was not substantially incapacitated from performing her duties as a Dental Assistant for Respondent CDCR.

After the initial IME was completed, CalPERS provided Dr. Henrichsen with additional medical records. After review of the additional evidence, Dr. Henrichsen reiterated his opinion that Respondent does not have an orthopedic impairment that rises to the level of substantial incapacity to perform her usual job duties as a Dental Assistant.

To be eligible for disability retirement, Respondent is required to present competent medical opinion that she is substantially incapacitated from performing the usual and customary duties of 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 her position. CalPERS notified Respondent of its determination to deny her application for industrial disability retirement. CalPERS informed Respondent of her right to appeal its determination.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). Two days of hearing were held on March 16 and August 30, 2023. Respondent was represented by counsel at the hearing. Respondent CDCR did not appear at the hearing. Due to Respondent CDCR's failure to appear, the case proceeded as a default under Government Code section 11520 as to Respondent CDCR only.

At the hearing, CalPERS presented testimony of Dr. Henrichsen who testified consistently with his examination of Respondent and his IME reports. Dr. Henrichsen

found Respondent's range of motion in her neck was reduced when looking down towards her chest and up toward the ceiling. Otherwise, her neck motion was normal. Respondent did not have muscle spasm or guarding in the neck. Dr. Henrichsen found no evidence of thoracic outlet compression syndrome, she did not have scapular instability. She did not have atrophy in her upper extremities. Dr. Henrichsen found no evidence of an injury to the brachial plexus. Respondent's right shoulder and rotator cuff strength were normal. Her extension was normal. Her external rotation was normal.

Dr. Henrichsen also examined Respondent's hands and wrists. He found no swelling or evidence of tendon ruptures. Her wrist mobility was normal. He determined that the nerves that supply feeling to Respondent's fingers were normal. Respondent's hand strength was normal in both hands. There was no evidence of atrophy.

Dr. Henrichsen's overall conclusion is that while Respondent claimed multiple symptoms, there are minimal objective abnormal findings. Dr. Henrichsen opined that Respondent "significantly reduced" her effort and "the medical records support that there is a large exaggeration of symptoms when compared to findings."

Respondent testified on her own behalf at the hearing. Respondent does not believe she can return to work as a Dental Assistant for Respondent CDCR. Respondent testified that after her carpal tunnel surgeries in 2012 and 2013, her wrist problems improved. However, by 2015, she began having problems again. She had tingling in her hands and began dropping things because of numbness. Respondent claimed that she dropped instruments "every day" and that she would "frequently lose control." She felt "very unsafe because she was concerned that she would hurt someone with the sharp instruments." By 2019, she experienced tingling and burning sensation and "trigger finger," where her middle finger and ring fingers on both hands locked up. Respondent testified that she cannot reach, pull, push, and or sleep on her right side because she has constant burning and stabbing pain in her shoulder.

Respondent also called Andrew K. Burt, M.D to testify on her behalf. Dr. Burt practiced medicine as a general practitioner from 1973 until 1982. Since 1982, he has worked exclusively conducting orthopedic disability evaluations with Doctors Industrial Medical Group, Inc. He has served as a QME evaluator for workers' compensation matters for the Department of Industrial Relations. Dr. Burt is not board-certified.

Dr. Burt conducted an IME of Respondent on February 2, 2023, at Respondent's request. As part of the IME, Dr. Burt interviewed Respondent, obtained a medical history, and conducted a physical examination. He also reviewed the Physical Requirements form and duty statement for Respondent's position. Dr. Burt also reviewed medical records related to Respondent's orthopedic conditions. Dr. Burt prepared a report dated February 14, 2023, and testified at the hearing consistent with the report.

Dr. Burt testified that at the time of his examination in February 2023, Respondent had reduced range of motion in her right shoulder. Dr. Burt opined that Respondent is

unable to perform her usual job duties as a Dental Assistant due to substantial incapacity related to ongoing complaints at the neck and upper extremities. He opined that Respondent is precluded from “prolonged positioning, reaching, repetitive upper extremity work, pushing and pulling encountered in that job.” Dr. Burt opined that Respondent’s substantial incapacity was permanent on February 26, 2015, when she was struck by the sally port gate.

Dr. Burt admitted that there were no x-rays or “electrodiagnostic studies” performed on Respondent to support his diagnosis. He also did not disagree with the electrodiagnostic study performed on Respondent in September 2020, which found no evidence for brachial plexopathy.

The ALJ found that Respondent failed to present competent medical evidence to demonstrate that she was permanently disabled or substantially incapacitated from the performance of her usual and customary duties as a Dental Assistant for Respondent CDCR. Dr. Burt’s opinion regarding Respondent’s inability to perform her job duties is primarily based on Respondent’s subjective complaints of pain. His diagnosis of thoracic outlet compression syndrome and brachial plexus, neuropraxia, which he contends supports his finding of substantial incapacity, are not supported by Respondent’s voluminous medical records, nor the IME performed by Dr. Henrichsen.

The ALJ found Dr. Henrichsen’s opinion was the most persuasive. His opinions are based on his review of Respondent’s duty statement, the physical requirements of her job as a Dental Assistant, review of her extensive medical records, reports, and studies and a physical examination. Dr. Henrichsen persuasively testified Respondent’s subjective complaints of pain do not rise to the level of substantial incapacity. After considering all the evidence introduced, as well as arguments by the parties, the ALJ determined that Respondent is not eligible for industrial disability retirement.

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

January 16, 2024

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Austa Wakily  
Senior Attorney