

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION**

Dawn J. Cales (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated January 16, 2024. For reasons discussed below, staff argues the Board should deny the Petition and uphold its decision.

On March 19, 2021, Respondent applied for disability retirement based on neuropsychological (PTSD, traumatic brain injury, post-concussion syndrome) and otolaryngologic (hearing loss and tinnitus) conditions. By virtue of employment as a Behavioral Health Services Crisis Worker I for County of Siskiyou (Respondent County), Respondent was a local miscellaneous member of CalPERS.

As part of CalPERS' review of Respondent's medical conditions, two board-certified specialists evaluated her. Charles A. Filanosky, Ph.D. a board-certified Neuropsychologist, performed an Independent Medical Examination (IME) regarding Respondent's neuropsychological (PTSD, traumatic brain injury, post-concussion syndrome) condition. Geoffrey A. Smith, M.D. a board-certified Otolaryngologist, performed an IME regarding Respondent's otolaryngologic (hearing loss and tinnitus) condition. Both specialists interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed her medical records and performed comprehensive IMEs. Both specialists opined that Respondent was not substantially incapacitated from the performance of her usual job duties as a Behavioral Health Services Crisis Worker I for Respondent County.

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 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 hearing was conducted over three days, on May 17, August 9, and December 14, 2023. Respondent represented herself at the hearing. Respondent County did not appear at the hearing and the matter proceeded as a default against Respondent County.

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. Filanosky testified in a manner consistent with his examination of Respondent and his IME report as it pertained to Respondent's neuropsychological condition. Dr. Filanosky testified that Respondent's testing consistently supported the presence of inadequate effort and feigning of cognitive and emotional impairment. Dr. Filanosky testified her condition of a mild concussive injury was inconsistent with testing "substantially" lower than that typically seen by patients with severe dementia, substantial traumatic brain injuries or persons who were in a coma. Dr. Filanosky's findings were that Respondent's overall performance during testing was "implausibly poor" and "way, way below expectation." Based on test results, Dr. Filanosky found that Respondent's test was a "performance" aimed to simulate or substantially magnify cognitive or emotional complaints. Dr. Filanosky concluded that Respondent was not substantially incapacitated for the performance of her usual job duties due to any neuropsychological conditions.

Dr. Smith testified in a manner consistent with his examination of Respondent and the IME report as it pertained to Respondent's otolaryngologic condition. Dr. Smith testified that Respondent's testing strongly indicated the presence of exaggeration. Respondent had indicated to Dr. Smith that she was not able to hear. Yet, Dr. Smith found that there were numerous conversations during his examination that showed Respondent was able to hear, and "considerably better than what she had tested." Additionally, the conversations between Dr. Smith and Respondent showed that Respondent was able to understand words better than during testing. Dr. Smith also observed that throughout the hearing Respondent appeared to hear and respond well. Dr. Smith concluded Respondent was not substantially incapacitated for the performance of her usual job duties due to any otolaryngologic conditions.

Respondent testified on her own behalf that she suffers from depression, anxiety and night terrors. Respondent was attacked by a client and later returned to work but found it extremely difficult to work because she had constant fear that she would be attacked again. Respondent testified that she has severe PTSD and a loss of hearing in both ears. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from her treating physicians to support her appeal. The records were admitted as administrative hearsay, which may be used to supplement or explain other evidence but is not sufficient in itself to support a finding. The ALJ dismissed Respondent's medical records because there was no direct medical evidence showing that she was substantially incapacitated for the medical records to supplement or explain.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent failed to meet her burden of proof to show by competent medical evidence that she was substantially incapacitated for the performance of her usual duties as a Behavioral Health Services Crisis Worker I with Respondent County due to either neuropsychological (PTSD, TBI, and post-concussion syndrome) or otolaryngologic (hearing loss and tinnitus) conditions when she applied for disability retirement.

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 March 20, 2024, meeting was well reasoned and based on the credible evidence presented at hearing.

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

April 16, 2024

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Attorney