

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

Norma A. Carrillo (Respondent) applied for Service Pending Industrial Disability Retirement based on an orthopedic condition (bilateral shoulder) on September 14, 2022. By virtue of her employment as a Correctional Sergeant for Central California Women's Facility, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent is a state safety member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Michael Quacinella, D.O., MPH, a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Quacinella interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Quacinella opined that Respondent's shoulders are structurally sound, and that she is not substantially incapacitated from performing any of the essential functions of a Correctional 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 of the medical documentation and the IME report, 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 held on April 29, 2024. Respondent represented herself at the hearing. Respondent CDCR did not appear at the hearing, so a default was taken as to Respondent CDCR only pursuant to Government Code section 11520.

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. Quacinella testified in a manner consistent with his examination of Respondent and his IME reports. Dr. Quacinella testified that Respondent demonstrated full shoulder strength with some limitations in flexibility. Dr. Quacinella's opinion is that Respondent's shoulders are structurally sound. Therefore, Respondent is not substantially incapacitated from performing her duties as a Correctional Sergeant due to her claimed orthopedic condition.

Respondent testified on her own behalf that she injured her left shoulder through repetitive use swinging her baton during training at work, and injured her right shoulder lifting a box over her head in the control booth while at work. Because of her shoulder injuries, she does not believe she would be able to perform all of the essential functions of a Correctional Sergeant.

Respondent introduced into evidence an Agreed Medical Evaluation (AME) report dated February 10, 2023, prepared by Michael Klassen, M.D. Dr. Klassen is a board-certified Orthopedic Surgeon, who evaluated Respondent as part of the workers' compensation process. He diagnosed Respondent with bilateral shoulder pain post rotator cuff surgery and opined that she has ten percent upper extremity impairment in both of her shoulders. Dr. Klassen recommended the following work restrictions: "No overhead activity. No pushing, pulling or carrying more than 25 pounds occasionally, 10 pounds frequently." Dr. Klassen did not testify at the hearing.

Respondent admitted that after she was placed on workers' compensation leave, she never had a return-to-work consultation. She explained that she always planned to retire at age 50, and she was about 50 years old at the time.

After considering all the evidence introduced, the ALJ denied Respondent's appeal. The ALJ found Dr. Quacinella's testimony persuasive, and that Respondent had failed to produce evidence to the contrary. The burden of proof was on Respondent, and Respondent failed to meet her burden.

The ALJ concluded that Respondent is not eligible for industrial disability retirement.

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 adding the word "industrial" in front of the words "disability retirement" on page six, paragraph numbers 12, and 1; on page seven, paragraph number 3 and in the Order of the Proposed Decision.

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

July 17, 2024

Mehron Assadi
Staff Attorney