

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Priscilla Castaneda (Respondent) applied for disability retirement based on an otolaryngological (vestibular lesion, dizziness and vertigo) conditions. By virtue of her employment as a Staff Services Analyst for Respondent Department of Rehabilitation (Respondent DOR), Respondent was a state miscellaneous member of CalPERS.

Respondent filed an application for disability retirement on June 23, 2017 based solely on her otolaryngological condition. Due to the recommendation made by the Otolaryngologist, CalPERS sent her for further evaluation with a Neuropsychologist.

As part of CalPERS' review of Respondent's medical condition, Theodore M. Mazer, M.D., a board-certified Otolaryngologist, performed an Independent Medical Examination (IME). Dr. Mazer interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Mazer opined that most of Respondent's complaints "are the result of underlying depression/anxiety and possible secondary gain, rather than directly due to any identified physical pathology." Based on this, Dr. Mazer concluded that Respondent is not substantially incapacitated from an otolaryngological point of view but should be evaluated by a neurophysiologist. Thereafter, Dr. Mazer reviewed additional medical records, but his opinion remained unchanged.

In July 2020, Respondent was evaluated by a Neuropsychologist IME, Dr. Mara Tansman, Psy.D. Dr. Tansman concluded that Respondent is substantially incapacitated from performance of her job duties due to her psychological condition. Dr. Mazer reviewed Dr. Tansman's report and additional medical records and concluded that his opinion remains unchanged. Dr. Mazer opined that while he agrees that Respondent is incapacitated based on psychological conditions, she is not substantially incapacitated based on otolaryngological conditions.

In order 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 issued an amended determination, finding that Respondent is substantially incapacitated based on her psychological condition but not her otolaryngological conditions. CalPERS notified Respondent that if she was reexamined for reinstatement in the future, she would be reexamined based on her psychological condition and no other conditions

and that if she wished for her future re-evaluation to be based on her otolaryngological conditions, then she must appeal and proceed with a hearing.

Respondent appealed part of CalPERS' determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). Respondent agreed with CalPERS' determination approving her for disability based on psychological conditions but disagreed with CalPERS' denial of disability based on otolaryngological conditions. On November 10, 2020, CalPERS filed an amended statement of issues on the sole issue of whether Respondent was substantially incapacitated based on the otolaryngological conditions.

A hearing was held on May 20, 2021. Respondent represented herself at the hearing. Respondent DOR did not appear at the hearing.

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. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing, Dr. Theodore M. Mazer, M.D. testified in a manner consistent with his examination of Respondent and the IME report. Dr. Mazer's medical opinion is that Respondent's complaints of dizziness, vertigo or balance stem from anxiety and psychological conditions. The positional testing was unremarkable and surgical intervention did not improve Respondent's symptoms. This is because her complaints are purely subjective and are a result of her psychological condition, not her otolaryngological conditions.

Respondent testified on her own behalf that she cannot perform her job duties due to dizziness and balance problems. Respondent also called her mother to testify on her behalf. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from her treating physician to support her appeal, which 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 a civil action.

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 establish by a preponderance of the evidence that she was permanently disabled or incapacitated from performing her usual and customary duties of a Staff Services Analyst, for DOR, based on otolaryngological conditions..."

The ALJ concluded that Respondent is not eligible for disability retirement based on the otolaryngological conditions.

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

September 15, 2021

Preet Kaur
Senior Attorney