

ATTACHMENT B

STAFF'S ARGUMENT

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

On August 18, 2022, Gabriela Mitchell (Respondent) applied for disability retirement based on an orthopedic condition (left hand). By virtue of employment as an Elementary Classroom Teacher for Desert Sands Unified School District, Riverside County Schools (Respondent District), Respondent was a local miscellaneous member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Emily Perez, M.D., a board-certified Orthopedic Surgeon specializing in hand surgery, performed an Independent Medical Examination (IME). Dr. Perez interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Perez opined that Respondent was not substantially incapacitated from the performance of her usual job duties as an Elementary Classroom Teacher for Respondent District.

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 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 10, 2024. Respondent represented herself at the hearing. Respondent District 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, answered Respondent's questions, and clarified how to obtain further information on the process.

At the hearing, Dr. Perez testified in a manner consistent with her examination of Respondent and the IME report. Dr. Perez's medical opinion is that Respondent had declined reasonably safe and effective treatment that would alleviate her minor orthopedic symptoms, including surgery and/or steroid injections. Dr. Perez also testified that even without treatment, Respondent could still perform her usual and customary job duties. Dr. Perez found that Respondent has normal strength in both hands, with no evidence of fracture or malignment. Based on the physical examination, Dr. Perez concluded that Respondent was not substantially incapacitated for the performance of her usual job duties due to an orthopedic condition in her left hand.

CalPERS presented testimony that Respondent had been approved for disability retirement due to orthopedic conditions related to her neck and back, and that due to Respondent's age she is not subject to reevaluation.

Respondent testified on her own behalf that she cannot perform her former job duties and that she manages pain in her left hand with good nutrition and yoga. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted various medical records and acupuncture treatments which were admitted as administrative hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but cannot be used to support a finding.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that the only admissible medical evidence came from Dr. Perez, who opined that Respondent is not substantially incapacitated due to an orthopedic condition in her left hand. The ALJ found that Dr. Perez's testimony provided objective observations to substantiate her conclusions, and that Respondent had refused reasonable medical treatment for her left hand. The ALJ found that Respondent cannot claim that she is disabled by a condition for which she refused reasonable medical treatment. In sum, 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 Elementary Classroom Teacher for Respondent District due to an orthopedic condition (left hand) when she applied for 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 that "in part" be added after the word "provides" in paragraph 8. on page 13, and ". ." be added after the word "school." in the last line of the quote in paragraph 8. on page 13.

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

June 12, 2024

Bryan Delgado
Attorney