

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Teri L. Duncan (Respondent) was a Pharmacy Technician at Central California Woman's Facility, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of her employment Respondent was a state miscellaneous member of CalPERS. On August 3, 2022, Respondent applied for disability retirement (DR) based on a pulmonary condition (COVID-19).

As part of CalPERS' review of Respondent's medical condition, Eli E. Hendel, M.D., board-certified in pulmonary and sleep medicine, performed an Independent Medical Examination (IME). Dr. Hendel interviewed Respondent, reviewed her work history and job description, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Hendel opined that Respondent was not substantially incapacitated from the performance of her usual job duties as a Pharmacy Technician for Respondent CDCR.

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 held on April 4, 2024. Respondent represented herself at the hearing. Respondent CDCR did not appear at the hearing and a default was taken as to Respondent CDCR only.

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. Hendel testified in a manner consistent with his examination of Respondent and the IME report. Dr. Hendel's medical opinion is that Respondent's pulmonary and respiratory conditions were normal. Respondent's lungs did not show shortness of breath at rest or while performing activities. Respondent's blood also tested negative for inflammation markers for COVID-19. Based on the physical examination and objective test results, Dr. Hendel concluded that Respondent was not

substantially incapacitated for the performance of her usual job duties due to any pulmonary condition.

Respondent testified on her own behalf that she suffers from swelling and pain. Respondent did not call any physicians or other medical professionals to testify. Respondent also did not offer into evidence any competent medical evidence or documentation to support her application for DR.

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. Hendel, who opined that Respondent is not substantially incapacitated. The ALJ found that Dr. Hendel testified in detail about his evaluation and review of Respondent's medical history and records. Furthermore, that Dr. Hendel's IME report was detailed and thorough, comprehensive and well-supported by the evidence. 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 Pharmacy Technician for Respondent CDCR due to a pulmonary condition (COVID-19) when she applied for disability retirement.

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

June 12, 2024

BRYAN DELGADO
Attorney