

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Rosa M. Garibay De Guzman (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated June 25, 2024. For reasons discussed below, staff argues the Board should deny the Petition and uphold its decision.

Respondent was employed by Napa County Schools – Office of Education and St. Helena Unified School District (Respondent District). On December 10, 2022, Respondent applied for disability retirement based on neurological conditions (cognitive issues and headaches).

As part of CalPERS' review of Respondent's medical condition, Daniel Shalom M.D., a board-certified Neurologist, performed an Independent Medical Examination (IME). Dr. Shalom interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Shalom opined that Respondent was not substantially incapacitated from the performance of her usual job duties.

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 ALJ with the Office of Administrative Hearings (OAH).

A hearing was held on June 6, 2024. Respondent did not appear at the hearing, despite receiving timely and appropriate notice. A default was taken as to Respondent only. A representative of Respondent District did appear to observe the hearing but did not participate substantively.

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. Shalom testified in a manner consistent with his examination of Respondent and his IME report. Dr. Shalom testified that Respondent is not substantially incapacitated from performance of her usual job duties, because her

neurological status was normal and there was no objective neurological evidence that suggested she could not do her usual work. Dr. Shalom emphasized that Respondent had been able to return to work previously, and told her treating physicians she was able to perform her job duties, although she wished for a reduced schedule. He found Respondent's headaches did not appear to be work-limiting.

After considering all the evidence introduced, as well as the arguments by CalPERS, the ALJ denied Respondent's appeal. The ALJ stated that Respondent did not appear at the hearing and did not present competent medical evidence in support of her application. Thus, the ALJ found that Respondent failed to meet her burden of establishing by a preponderance of the evidence that she is substantially incapacitated. Furthermore, the only medical evidence that was admitted established that Respondent was not substantially incapacitated. The ALJ found that Dr. Shalom testified credibly and convincingly during the hearing as to his medical opinion that Respondent is not substantially incapacitated for performance of duty, and as to the bases for his opinion.

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 September 18, 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.

November 20, 2024

BRYAN DELGADO
Attorney