

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Joaquin T. David (Respondent) was employed as an Exhibit Designer-Installer for Respondent California Science Center, California African American Museum (Respondent Center). By virtue of his employment, Respondent was a state miscellaneous member of CalPERS.

On August 22, 2021, Respondent submitted an application for service retirement. He retired for service effective August 13, 2021, and has been receiving his service retirement allowance from that date.

On October 11, 2021, Respondent applied for disability retirement based on otolaryngological (dysphonia, bilateral hearing loss) and orthopedic (arms) conditions. Respondent later withdrew his claim for orthopedic disability, so the only issue for hearing was whether his otolaryngological (dysphonia, bilateral hearing loss) condition rendered him substantially incapacitated to perform his usual job duties.

As part of CalPERS' review of Respondent's medical condition, Geoffrey Smith, M.D., a board-certified Otolaryngologist, performed an Independent Medical Examination (IME). Dr. Smith interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Smith opined that Respondent was not substantially incapacitated from the performance of his usual job duties as an Exhibit Designer-Installer for Respondent Center.

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 his position. Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH).

A hearing was held on September 10, 2024. Respondent represented himself at the hearing. Respondent Center did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his 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. Smith testified in a manner consistent with his examination of Respondent and the IME reports. Dr. Smith found that Respondent's voice was normal at times, at times it was a whisper, and at other times it was tightened with a falsetto voice. Direct laryngoscopic examination showed no paralysis of his vocal cords, laryngeal nerves as being functional, and superior laryngeal nerves as functional as well. Dr. Smith testified that the two main nerves in Respondent's larynx were intact and working, with normal vocal cord mobility on both sides. Dr. Smith observed that Respondent was able to hear well and respond appropriately, and at other times claimed he was unable to hear. Dr. Smith found a moderate hearing loss at high frequencies, and noted the medical treatment for Respondent's hearing loss was hearing aids. Dr. Smith opined that Respondent was exaggerating his complaints. Dr. Smith concluded that Respondent was not substantially incapacitated for the performance of his usual job duties due to any otolaryngological condition.

Respondent testified on his own behalf that he cannot complete his job duties because he cannot talk and has a hearing problem. Respondent did not call any physicians or other medical professionals to testify. Respondent also did not seek to have any documents admitted into evidence.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent failed to meet his burden of establishing by a preponderance of the evidence that he is substantially incapacitated. Furthermore, the only medical evidence admitted was Dr. Smith's testimony and reports which was unrefuted and established that Respondent was not substantially incapacitated. The ALJ found that Dr. Smith presented competent medical evidence in his testimony through his examination and review of Respondent's medical records. Accordingly, the ALJ concluded that Respondent was not substantially incapacitated for the performance of his usual job duties as an Exhibit Designer-Installer for Respondent Center due to any otolaryngological conditions.

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

November 20, 2024

Bryan Delgado
Attorney