

ATTACHMENT B

STAFF'S ARGUMENT

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

Victoria T. Barcnas (Respondent) was employed as a Staff Services Analyst for California Department of Transportation - District 04 (Respondent CalTRANS). Respondent applied for disability retirement based on orthopedic conditions (back, neck, and bilateral upper extremities), rheumatological condition (fibromyalgia). By virtue of her employment, Respondent was a state miscellaneous member of CalPERS.

Respondent submitted an application for service pending disability retirement on December 2, 2021, and has been receiving benefits since that time.

As part of CalPERS' review of Respondent's medical condition, Scott T. Anderson, M.D., a board-certified Rheumatologist, and Anthony Bellomo, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME) in his respective specialty. Both IMEs interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Both IMEs opined that Respondent was not substantially incapacitated from performing her 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 Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH).

A hearing was held on October 2, 2024. Respondent represented herself 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. Anderson testified in a manner consistent with his examination of Respondent and the IME report. Dr. Anderson opined that although Respondent has fibromyalgia, it "does not cause impaired range of motion, muscular wasting, neurological manifestations, or functional capacity limitations that would prevent [Respondent] from performing her essential duties." Therefore, in his medical opinion, Respondent is not substantially incapacitated. Similarly, Dr. Bellomo opined that Respondent is not restricted from performing any of her job duties due to any orthopedic

condition. Dr. Bellomo observed no significant objective findings that would lead him to believe that Respondent is substantially incapacitated. Both IMEs opined that Respondent did not put forth full effort during the range of motion portion of the examination.

Respondent testified on her own behalf that she cannot perform her job duties due to her orthopedic conditions and fibromyalgia. Respondent did not call anyone to testify on her behalf, but she did submit one medical record from her treating physician, and a few from physicians in support of her disabled parking placard. These medical records 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 Respondent had the burden of proving that she is incapacitated physically for the performance of her duties. The ALJ found that Respondent failed to establish that she was incapacitated from the performance of her duties as a Staff Services Analyst at the time of her application. The ALJ held that the testimony and reports of Dr. Anderson and Bellomo were "much more persuasive" than the medical reports presented by Respondent. Further, the ALJ found that Respondent's treating physician's opinion and the opinions expressed in Respondent's disabled parking placard application were unpersuasive because they were not based on the CalPERS standard for disability, were not subject to cross-examination, contained only summaries without objective support, and were hearsay. Therefore, the ALJ concluded that Respondent is not eligible 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: removing the word "industrial" before the words disability retirement on page 2 paragraph 3 under, line 2; page 3 paragraph 5 line 2, and page 3 paragraph 6 line 2; changing the name Dr. Williams to Dr. Bellomo, on page 15, paragraph 39 line 13; and changing the name Olivia to Victoria on page 17.

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

January 13, 2025

Preet Kaur
Senior Attorney