

ATTACHMENT B

Staff Argument

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Christine V. Heaney (Respondent) was employed by Substance Abuse Treatment Facility, California Department of Corrections and Rehabilitation (Respondent CDCR) as a Licensed Vocational Nurse (LVN). By virtue of her employment, Respondent was a state safety member of CalPERS.

On March 20, 2019, Respondent submitted an application for industrial disability retirement on the basis of an orthopedic condition (right wrist). Respondent's application was approved by CalPERS, and she retired effective April 4, 2019.

On October 12, 2022, CalPERS notified Respondent that she would be reevaluated for the purpose of determining whether she remained substantially incapacitated and entitled to continue to receive an industrial disability retirement.

To remain eligible for disability retirement, competent medical evidence must demonstrate that the individual remains substantially incapacitated from performing the usual and customary duties of her former 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.

As part of CalPERS' review of Respondent's medical condition, Respondent was sent to Don T. Williams, M.D., a board-certified Orthopedic Surgeon, for an Independent Medical Examination (IME). Dr. Williams interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Williams also performed a comprehensive IME. Dr. Williams opined that Respondent is no longer substantially incapacitated from performing her job duties as an LVN.

After reviewing all the medical documentation and the IME reports, CalPERS determined that Respondent was no longer substantially incapacitated, and therefore was no longer eligible to receive industrial disability retirement benefits.

On September 19, 2023, Respondent and Respondent CDCR were notified of CalPERS' determination.

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 14, 2024. Respondent represented herself at the hearing. Respondent CDCR did not appear at the hearing, so a default was taken with respect to Respondent CDCR pursuant to Government Code section 11520, subdivision (a).

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. Williams testified in a manner consistent with his examination of Respondent and the IME report. Dr. Williams performed a physical examination of Respondent with a focus on Respondent's cervical spine, upper extremities and wrists. Dr. Williams diagnosed Respondent with "[p]ost reconstruction of the right wrist scapholunate ligament tear and post debridement of triangular fibrocartilage complex small tear. Good result." Dr. Williams also reviewed Respondent's medical records including her operative reports related to her right wrist surgeries. The post-surgery reports indicated X-rays and MRIs were normal.

Respondent testified on her own behalf that she has restrictions given to her by her workers' compensation physicians. Respondent testified she could not push, pull or lift over 10 pounds, and that she cannot push down with her right wrist to perform CPR. Respondent testified that doing these tasks risked re-injuring her wrist. She further testified that she did not believe it was safe for her to go back to work as an LVN for Respondent CDCR because of her wrist problems and the risk of re-injury.

With respect to Respondent's contention that she is unable to perform CPR in the usual manner, Dr. Williams testified that she is still capable of performing CPR using a different technique. Regarding the possibility of re-injury, Dr. Williams testified that such prophylactic restrictions cannot establish a finding of substantial incapacity pursuant to the CalPERS' disability-retirement standard. As Dr. Williams explained, "prophylactic restrictions to avoid the remote possibility of reinjury are distinctly different than substantial incapacity."

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal, finding that CalPERS had submitted sufficient evidence to meet its burden of proving by competent medical evidence that Respondent was no longer substantially incapacitated for performance of her duties as an LVN. The ALJ found the testimony and report of Dr. Williams credible and persuasive. As a result, the ALJ held that Respondent is not substantially incapacitated from performing her usual duties as an LVN with Respondent CDCR.

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

January 13, 2025

Mehron Assadi
Staff Attorney