

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Claudia E. Orozco (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated November 20, 2024. For reasons discussed below, staff argues the Board should deny the Petition for Reconsideration and uphold its decision.

On August 11, 2021, Respondent submitted an application for disability retirement based on orthopedic conditions (right shoulder, right elbow, right wrist, and right carpal tunnel syndrome). Respondent's application was approved by CalPERS and she retired with an effective date of August 3, 2021.

In 2023, CalPERS staff notified Respondent that CalPERS conducts reexaminations of persons on disability retirement, and that she would be reevaluated for purposes of determining whether she remains substantially incapacitated and is entitled to continue to receive a 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, on July 25, 2023, Respondent was sent for an Independent Medical Examination (IME) to Robert K. Henrichsen, M.D., a board-certified Orthopedic Surgeon. Dr. Henrichsen interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Henrichsen opined that Respondent's condition was relatively minor and that Respondent was not substantially incapacitated from the performance of her usual job duties as a Social Worker III for Respondent County.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was no longer substantially incapacitated from performing the duties of a Social Worker III, and thereby ineligible for a disability retirement.

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 July 29, 2024. Respondent represented herself at the hearing. Respondent County did not appear at the hearing and a default was taken as to Respondent County 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. Henrichsen testified in a manner consistent with his examination of Respondent and the report prepared after the IME. Dr. Henrichsen testified that his examination of Respondent yielded very minor results and does not rise to the level of substantial incapacity. In particular, his examination of Respondent only revealed mild elbow tendinitis and a partial tendon tear in her right shoulder. Dr. Henrichsen also testified that Respondent did not have carpal tunnel syndrome, but instead had amplified pain syndrome with symptoms greater than examination findings. Dr. Henrichsen found that Respondent's shoulder was essentially normal. Therefore, his medical opinion is that Respondent can perform the duties of her position and she is no longer substantially incapacitated.

Respondent testified on her own behalf that she believes she is entitled to a disability retirement because she has pain and had previously worked hard and "paid into CalPERS." Respondent did not call any witnesses to testify on her behalf. Respondent did introduce prior medical records, a work status report and a decision by an Administrative Law Judge with the Social Security Administration (SSA). Each of the 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 at the hearing, the ALJ denied Respondent's appeal. The ALJ found that Respondent is no longer substantially incapacitated from performing her duties as a Social Worker III for Respondent County. As the ALJ explained, no other physician provided competent medical opinion to the contrary. Further, the SSA ALJ's decision did not constitute competent evidence to support Respondent's substantial incapacity under the CalPERS' standard of disability. Additionally, the evidence submitted by Respondent did not establish that the professionals mentioned therein specialized in orthopedic medicine, unlike Dr. Henrichsen. Moreover, the evidence provided by Respondent did not diagnose any specific conditions and were inadequate to rebut Dr. Henrichsen's findings. Instead, the ALJ found that Dr. Henrichsen provided competent medical evidence, testified credibly, and explained why Respondent's conditions do not demonstrate her continued substantial incapacity.

The sole issue for determination at hearing was whether Respondent continued to be substantially incapacitated from the performance of her usual and customary duties as a Social Worker III for Respondent County due to orthopedic conditions. Respondent's Petition for Reconsideration alleges a psychiatric condition (PTSD). Respondent was not approved for disability retirement on the basis of a psychiatric condition and her claimed psychiatric condition was never made subject to CalPERS' determination.

Thus, her claimed psychiatric condition was never an issue before the ALJ. If Respondent believes she is disabled on the basis of a psychiatric condition, then she can submit a new IDR application to CalPERS for a determination to be made on her newly claimed condition.

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 November 20, 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.

January 13, 2025

BRYAN DELGADO
Attorney