

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Irene Santiago (Respondent) applied for disability retirement on March 20, 2019, based on orthopedic (ganglion cyst (right hand/wrist), bilateral carpal tunnel syndrome, de Quervain's tenosynovitis (left hand/wrist) and ulnar nerve damage) and cardiovascular (coronary artery disease) conditions. By virtue of her employment as a Case Records Technician for Respondent Avenal State Prison, California Department of Corrections and Rehabilitation (CDCR), Respondent is a state industrial member of CalPERS.

As part of CalPERS' review of Respondent's medical conditions, Charles F. Xeller, M.D., a board-certified Orthopedic Surgeon performed an orthopedic Independent Medical Examination (IME). Dr. Xeller interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed her medical records, and performed a physical examination. Dr. Xeller opined that Respondent was not substantially incapacitated to perform her usual job duties based on her orthopedic conditions.

Thomas E. Leonard, M.D., a board-certified Internist with subspecialties in Cardiology and Pulmonology, performed a cardiovascular Independent Medical Examination (IME). Dr. Leonard interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed her medical records, and performed a physical examination. Dr. Leonard opined that Respondent was not substantially incapacitated to perform her usual job duties based on her cardiovascular conditions.

In order 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 July 19, 2021. Neither Respondent nor CDCR appeared at the hearing. The ALJ found that the matter could proceed as a default against both Respondents, pursuant to Government Code section 11520, subdivision (a).

At the hearing, Dr. Xeller testified in a manner consistent with his examination of Respondent and his IME report. Dr. Xeller's medical opinion is that Respondent responded well to her prior surgeries and she could return to work. Therefore, Dr. Xeller's competent medical opinion is that Respondent is not substantially incapacitated.

Dr. Leonard testified in a manner consistent with his examination of Respondent and his IME reports. Dr. Leonard's medical opinion is that Respondent had successful cardiac procedures and was "doing quite well." Respondent's medical records showed no evidence of progressive cardiovascular disease and Dr. Leonard found no cardiopulmonary abnormalities during his physical examination. Dr. Leonard's competent medical opinion is that Respondent is not substantially incapacitated.

After considering all of the evidence introduced, the ALJ denied Respondent's appeal. The ALJ found that Respondent had the burden of proof to show by competent medical opinion that she was incapacitated for the performance of her duties at the time she applied for disability retirement. The ALJ reasoned that CalPERS presented two doctors who evaluated Respondent and opined she is not substantially disabled from performing her usual job duties based on either orthopedic or cardiac conditions. Respondent failed to appear at the hearing, and did not present any evidence. She did not meet her burden of proof. The ALJ concluded that Respondent is not eligible for disability retirement.

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

September 15, 2021

Helen L. Louie
Staff Attorney