

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Marian Husted (Respondent) applied for industrial disability retirement based on a pulmonary/internal (valley fever) condition. By virtue of her employment as a Supervising Rehabilitation Therapist for Respondent Department of State Hospitals - Coalinga Secure Treatment Facility (Respondent DSH), Respondent was a state safety member of CalPERS.

Respondent filed an application for service pending industrial disability retirement on June 5, 2019. She retired for service effective July 1, 2019 and has been receiving service benefits since that time.

As part of CalPERS' review of Respondent's medical condition, Thomas E. Leonard, M.D., a board-certified Internist, performed an 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 is not substantially incapacitated to perform her usual job duties.

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 April 15, 2021 and May 26, 2021. Respondent was represented by counsel at the hearing. Respondent DSH did not appear at the hearing. The ALJ found that the matter could proceed as a default against Respondent DSH, pursuant to Government Code section 11520, subdivision (a).

At the hearing Jason Simmons, M.D., Ph.D. testified on Respondent's behalf. Dr. Simmons is board-certified in Internal Medicine and Infectious Diseases, and has treated Respondent since 2020. Dr. Simmons' testified that he first examined her in January 2020, and Respondent was not experiencing any flare ups of valley fever at that time. He testified that Respondent could have flare ups as a result of disseminated valley fever, but no procedure to confirm disseminated valley fever had been performed on Respondent.

Kimberly Dougan, M.D., Respondent's primary care physician, testified on Respondent's behalf. Dr. Dougan testified that she was not treating Respondent for valley fever and had never treated a patient with valley fever. Dr. Dougan opined that Respondent would not be able to perform her job duties due to her fatigue and shortness of breath.

Respondent testified on her own behalf. She testified about her medical condition, her treatment, and her job as a Supervising Rehabilitation Therapist. Respondent also submitted medical records from her treating physicians to support her appeal. Dr. Simmons and Dr. Dougan's medical records were admitted as direct evidence. Medical records from other physicians were admitted as administrative hearsay. Hearsay evidence may supplement or explain other evidence but is not sufficient by itself to support a finding.

Dr. Leonard testified in a manner consistent with his examination of Respondent and the IME reports. Dr. Leonard's medical opinion is that there is no evidence that Respondent suffers from disseminated valley fever or that she has active disease activity. Respondent's C-reactive protein and sedimentation rate were normal, and the imaging studies of Respondent's lung cavity showed that her lung cavity was stable. Therefore, Dr. Leonard's competent medical opinion is that Respondent is not substantially incapacitated.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent failed to present competent, objective medical evidence to establish that she was substantially incapacitated from performance of her usual duties as a Supervising Rehabilitation Therapist. The ALJ reasoned that Respondent presented evidence of subjective complaints but found Dr. Leonard's medical opinion that the objective findings do not support that Respondent is substantially incapacitated from performance of her usual job duties to be most persuasive. The ALJ found that Dr. Simmons and Dr. Dougan did not provide any opinions supported by objective findings to establish Respondent is substantially incapacitated. The ALJ concluded that Respondent is not eligible for industrial disability retirement.

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

November 17, 2021

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Staff Attorney