

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Haisong Peng (Respondent) filed an application for Service Pending Industrial Disability Retirement on July 11, 2019, based on neurological (left side weakness, dizziness) and psychological (anxiety) conditions. By virtue of employment as a Health Program Audit Manager I for Respondent Department of Health Care Services (Respondent DHCS), Respondent was a state miscellaneous member of CalPERS. She began receiving service retirement benefits in August 2019. The issue in this appeal is whether she is eligible to receive disability retirement benefits.

As part of CalPERS' review of Respondent's medical condition, Alberto G. Lopez, M.D., a board-certified Psychiatrist, performed a psychiatric Independent Medical Examination (IME). Dr. Alberto G. Lopez, M.D. interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Alberto G. Lopez, M.D. opined that Respondent had "psychological factors affecting general medical condition, migraines." Based on his examination and review of available records, Dr. Lopez testified that Respondent is not substantially incapacitated to perform her usual job duties due to psychiatric condition. Dr. Lopez noted that Respondent has undergone very little medical treatment, refused to take prescribed medications, and failed to complete psychological therapy as recommended by her treating physicians.

Respondent was also sent to Pramila Gupta, M.D., a board-certified Neurologist, for a neurological Independent Medical Examination (IME). Dr. Gupta interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Gupta opined that Respondent had a history of migraines and episodic left-sided weakness caused by anxiety/panic attacks. However, Dr. Gupta found no neurological deficit that would cause Respondent to be substantially incapacitated from performing her 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 from both doctors, 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 27, 2021. Respondent represented herself at the hearing. Respondent DHCS did not appear 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. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing, Dr. Lopez and Dr. Gupta testified consistent with their examinations of Respondent and their IME reports. Both IMEs' medical opinion is Respondent is not substantially incapacitated to perform her job duties as a Health Program Audit Manager I for Respondent DHCS. She is not disabled.

Respondent testified on her own behalf that during the period from 2011 to the end of 2013, she experienced "signals" from her body including dizziness, blurred vision and sensitivity to sounds. She thought the signals were from job stress, and she rested at home. In April 2016, she went to her primary physician who noted symptoms of fatigue and left sided weakness. She was diagnosed with anxiety and adjustment disorder with anxiety. She later saw a neurologist who diagnosed her with migraines and left sided weakness associated with work stress. She was referred to behavioral health, but she "disregarded" the referral because she "believes in nature". Although she was prescribed medication as well, she did not take the medications, nor did she seek help from a counselor or psychologist. She chose to use "alternative ways" to "help to ease [her] health condition on the psychological side." She continues to refuse to take any prescribed medications related to her psychological condition.

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 had the burden to prove that at the time she filed her IDR application, she was substantially unable to perform the usual duties of a Health Program Audit Manager I due to neurological and psychological conditions. The ALJ found she did not meet her burden. She did not present any competent medical evidence. In addition, her own testimony showed that she refused reasonable medical treatment of her anxiety with prescribed medication and counseling. The ALJ found that she cannot now claim she is disabled by a condition for which she refused reasonable medical treatment. The ALJ concluded that Respondent is not eligible for disability retirement.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." Staff recommends that the Board modify the Proposed Decision, by changing the date of the Proposed Decision from August 18, 2020 to August 18, 2021.

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

November 17, 2021.

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Senior Attorney