

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Amber N. Keup (Respondent) applied for disability retirement on July 15, 2020, based on a pulmonological (sleep apnea) condition. By virtue of her employment as a Secretary I for Respondent Stanislaus County Schools - Turlock Unified School District (Respondent District), Respondent is a local miscellaneous member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Omar Tirmizi, M.D., who is board-certified in Internal Medicine, Pulmonary Medicine, Critical Care Medicine and Sleep Medicine, performed an Independent Medical Examination (IME). Dr. Tirmizi 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. Tirmizi opined that Respondent is not substantially incapacitated from performance of her Secretary I 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 February 3, 2022. Respondent District appeared at the hearing through its Human Resources Director. Respondent did not appear at the hearing. The ALJ found that the matter could proceed as a default against Respondent, pursuant to Government Code section 11520.

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. Tirmizi testified in a manner consistent with his examination of Respondent and the IME report. Dr. Tirmizi's medical opinion is that Respondent has mild obstructive sleep apnea and hypersomnia, but these conditions do not arise to the

level of substantial incapacity. Therefore, Dr. Tirmizi's competent medical opinion is that Respondent is not substantially incapacitated from performing the usual duties of her position as a Secretary I.

After considering all of the evidence introduced, the ALJ denied Respondent's appeal. The ALJ found that Respondent bears the burden of proof and failed to offer competent medical evidence to establish that she is substantially incapacitated from performing the usual duties of her position as a Secretary I. The ALJ found that the persuasive medical evidence established that Respondent is not substantially incapacitated from performing her usual Secretary I job duties. 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." In order to avoid ambiguity, staff recommends correcting the definition for Government Code section 20026 from ". . . mean disability of permanent or extended and uncertain duration . . ." to ". . . mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death . . ." in paragraph 1, under the Legal Conclusions section, on page 7 of the Proposed Decision.

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

April 19, 2022

Helen L. Louie
Attorney