

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Tamara Dunn (Respondent) applied for disability retirement on July 26, 2021, based on orthopedic (bilateral wrists, fingers, bilateral hands, left arm) conditions. By virtue of her employment as an Administrative Analyst/Specialist for California State University, Sacramento (Respondent CSUS), Respondent was a state miscellaneous member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Harry A. Khasigian, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Khasigian interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Khasigian opined that Respondent's basis for disability appeared to be a high level of subjective complaints without any correlation of objective impairment. Dr. Khasigian found Respondent's claimed conditions to be "modest" and she presented during examination as "normal." Dr. Khasigian opined that Respondent does not have an impairment that amounted to a substantial incapacity to perform her job duties as an Administrative Analyst/Specialist.

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 due to her orthopedic conditions. On October 6, 2021, CalPERS notified Respondent of its determination.

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 October 5, 2022. Respondent represented herself at hearing. Respondent CSUS 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. Khasigian testified in a manner consistent with his examination of Respondent and his IME report. Dr. Khasigian's competent medical opinion is that Respondent presented normally and that there was no objective evidence to correlate with her subjective complaints. Therefore, Respondent is not substantially incapacitated from performing the usual and customary duties of her position as an Administrative Analyst/Specialist.

Respondent testified on her own behalf that she has suffered from her condition since about 2007 and her condition worsened over time. She experiences numbing pain that prevents her from performing her job duties. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from her treating physicians which were admitted as administrative hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but is not sufficient in itself to support a finding.

Respondent also called Edmond Provder, a certified Rehabilitation Counselor, to testify on her behalf. Mr. Provder opined that Respondent was unable to perform her former work. Because Mr. Provder is not a physician and did not perform a physical examination of Respondent, the ALJ found that he did not provide a competent medical opinion.

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 presented evidence of subjective complaints without objective support, and that there was no evidence to support substantial incapacity. Instead, the records corroborated Dr. Khasigian's opinion that Respondent is not substantially incapacitated to perform her usual job duties. The ALJ concluded that Respondent is not eligible for disability retirement.

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

January 17, 2023

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