

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Leticia Morando-Hernandez (Respondent) applied for disability retirement based on a Neurological (Functional Neurologic Disorder) condition. By virtue of her employment as a Secondary School Secretary for Castro Valley Unified School District (Respondent District) and Alameda County Schools (Respondent County), Respondent was a local miscellaneous member of CalPERS. Respondent filed an application for Service Pending Disability Retirement on September 29, 2021, and has been receiving a service retirement benefit effective May 23, 2022.

As part of CalPERS' review of Respondent's medical condition, Alok K. Bhattacharyya, M. D., a board-certified Neurologist, performed an Independent Medical Examination (IME). Dr. Bhattacharyya interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Bhattacharyya opined that Respondent is not substantially incapacitated.

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 October 20, 2022. Respondent represented herself at the hearing. Dustin Gacherieu, Director of Human Resources appeared on behalf of Respondent District at the hearing but did not testify or provide any evidence. Respondent County did not appear at the hearing, and the matter proceeded as a default hearing as to Respondent County only, 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. Bhattacharyya testified in a manner consistent with his examination of Respondent and his IME report. Dr. Bhattacharyya's medical opinion is that Respondent is not substantially incapacitated because her subjective complaints and

the objective findings could not be correlated. Dr. Bhattacharyya's examination of Respondent's cranial nerves 2 through 10 was normal, and there was no sensory impairment during light touch or pain sensation. Respondent's neurological point of view was significantly evaluated in the past by her treating doctor and included multiple treatments and multiple investigations. Although Respondent claims she has a history of repetitive hand use, Dr. Bhattacharyya's evaluation of Respondent did not reveal any evidence of neurological dysfunction including any evidence of nerve entrapment pathology, neuropathy, or cervical radiculopathy. The electrodiagnostic studies and MRI tests performed on Respondent were all within normal limits.

Respondent testified on her own behalf that she has severe headaches, migraines, and anxiety, an electric shock-like feeling, and has trouble thinking, concentrating, and coming up with words. She feels numbness in her face, lips, and eyelids. She has chronic stiffness and pain in her neck and in her shoulders which limits mobility, mostly on her right side. Both legs are shaky and weak, her knees buckle (mostly the right), and she has trouble balancing when walking.

Respondent did not call any physicians or other medical professionals to testify but did submit medical records from her treating physicians, Drs. Christine Lu and Judy Chang-Witt, to support her appeal. The medical records were admitted as administrative hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions-

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Dr. Bhattacharyya's opinion was more persuasive than the reports of Respondent's treating physicians because he testified at hearing, explained the factual basis for his opinion, and was subject to cross-examination. Neither of Respondent's treating physicians testified at hearing, explained the factual basis for their opinions, or were subject to cross-examination.

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

January 17, 2023

Nhung Dao
Attorney