

ATTACHMENT B

STAFF'S ARGUMENT

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

Debra A. Postil (Respondent) applied for disability retirement based on orthopedic (carpal tunnel syndrome, cervical spine sprain/strain) and psychological posttraumatic stress disorder (PTSD) conditions. By virtue of employment as an Assistant District Attorney for the County of Riverside (Respondent Riverside County), Respondent was a local miscellaneous member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Jon P. Kelly, M.D., a board-certified Orthopedic Surgeon, and Matthew Carroll, M.D., a board-certified Psychiatrist, performed Independent Medical Examinations (IME) in their respective specialties. Both doctors interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Both doctors opined that Respondent was not substantially incapacitated to perform her job duties.

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 her job duties.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. Two days of hearing were held on August 22, and October 9, 2023. Respondent was represented by counsel at both days of hearing. Respondent Riverside County did not appear at the hearing. The ALJ found that the matter could proceed as a default against Respondent Riverside County, pursuant to Government Code section 11520.

At the hearing, Dr. Kelly and Dr. Carroll both testified in a manner consistent with their examinations of Respondent and the IME reports. Both doctors' medical opinions were that Respondent's condition did not amount to a degree of incapacity which would entitle her to CalPERS disability retirement.

Dr. Kelly's opinion was that Respondent's back problems were mild and since she had been off work, her condition had improved. Regarding her carpal tunnel syndrome, Dr. Kelly did not find that her condition was disabling, and he further found that she was a good candidate for carpal tunnel release surgery, which he testified is the standard of care for someone with her condition.

Dr. Carroll opined that Respondent had an unspecified depressive disorder, but he determined that it did not amount to “full blown depression.” Further, Dr. Carroll testified that since Respondent continued to work as an attorney even after she stopped working for Respondent Riverside County, her condition was not disabling.

Respondent testified that she had significant orthopedic and psychological issues stemming from her work as a prosecutor for Respondent Riverside County. She was assigned to the gang unit, where she handled violent felonies including gang homicide, sexual assault, and child abuse. As a result of her work, she became increasingly fearful and paranoid, due to feelings that gang members were stalking and targeting her and her family. She felt threatened and paranoid. She began treating with Dr. Nancy Woods, Psy.D., to help reduce her anxiety and work difficulties. Respondent submitted medical records from her treating physicians to support her appeal which were admitted as administrative hearsay. Administrative hearsay may be used to supplement or explain other evidence but cannot be used in itself to support a finding.

Respondent also called her treating psychologist, Dr. Woods, to testify on her behalf. Dr. Woods asserted that Respondent had major depression and some PTSD. Dr. Woods said that Respondent was not capable of returning to work for Respondent Riverside County, because the high volume of cases involving harm and violence would ‘trigger’ Respondent’s symptoms.

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 establish by a preponderance of the evidence that she was permanently disabled or substantially incapacitated from performing her usual and customary duties as an Assistant District Attorney for Respondent Riverside County. The ALJ concluded that Respondent is not eligible for disability retirement.

Pursuant to Government Code section 11517, subdivision (c)(2)(C) the Board is authorized to “make technical or other minor changes in the Proposed Decision.” To avoid ambiguity, staff recommends that the following edit be made: on page 28 of the Proposed Decision, in the second paragraph of the Legal Conclusions section, the quotation from California Government Code section 20026 be edited to remove the words “and uncertain.” This will change the quotation to read, “disability of permanent or extended duration.”

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

January 16, 2024

Mehron Assadi
Staff Attorney