

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION**

Jacquelyn K. Vanzant (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated March 11, 2024. For reasons discussed below, staff argues that the Board should deny the Petition for Reconsideration and uphold its decision.

On February 5, 2018, Respondent submitted an application for industrial disability retirement (IDR) on the basis of neurological conditions (migraines and cervical spine). Respondent's application was approved by CalPERS and she retired on September 18, 2018.

In 2022, CalPERS staff notified Respondent that CalPERS conducts reexaminations of persons on disability retirement, and that she would be reevaluated for purposes of determining whether she remains substantially incapacitated and is entitled to continue to receive an IDR.

To remain eligible for disability retirement, competent medical evidence must demonstrate that an individual remains substantially incapacitated from performing the usual and customary duties of her former 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.

As part of CalPERS' review of Respondent's medical condition, on February 15, 2023, Respondent was sent for an Independent Medical Examination (IME) to William M. Hammesfahr, M.D., a board-certified Neurologist. Dr. Hammesfahr interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Hammesfahr also performed a comprehensive IME. Dr. Hammesfahr opined that Respondent's condition was relatively minor and that Respondent was not substantially incapacitated from the performance of her usual job duties as a Correctional Supervising Cook for California Department of Corrections and Rehabilitation (Respondent CDCR).

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was no longer substantially incapacitated from performing the duties of a Correctional Supervising Cook, and thereby ineligible for IDR.

Respondent appealed this determination and exercised her right to a hearing before an ALJ with the Office of Administrative Hearings (OAH). A hearing was held on February 15, 2024. Respondent represented herself at the hearing. Respondent CDCR presented its Personnel Officer as agency representative 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, answered Respondent's questions, and clarified how to obtain further information on the process.

At the hearing, Dr. Hammesfahr testified in a manner consistent with his examination of Respondent and the report prepared after the IME. Dr. Hammesfahr testified that his examination of Respondent yielded very minor results and that those results do not rise to the level of substantial incapacity. Respondent complained of a bad headache, and she demonstrated some light sensitivity (e.g. squinting) which can be typical with post-concussion syndrome. However, she was not wearing sunglasses to avoid the light in his office, did not ask to have the lights turned off, and she had no problem with the flashlight beams aimed at her eyes during the examination. Dr. Hammesfahr also testified that Respondent was able to sit and stand for over 10 minutes without discomfort or having to change position. Her cognition and reflexes were normal, and she did not demonstrate any dizziness or loss of balance. Respondent also did not have abnormal neurological findings detectable on examination to corroborate the presence of migraines. Dr. Hammesfahr's medical opinion is that Respondent can perform the duties of her position and she is therefore no longer substantially incapacitated.

Furthermore, Dr. Hammesfahr also testified that Respondent "has not yet undergone common safe medical regimens to treat post-concussive migraine headaches" that had previously been recommended to her. By availing herself of available and reasonably safe and effective treatments, Respondent's minor headache condition would have resolved within one to two months.

Respondent testified on her own behalf that she employs different methods to avoid triggering her headaches, such as blackout curtains at her home, replacing her television and computer with a projector, and using noise-canceling headphones. Respondent did not call any witnesses to testify on her behalf. Respondent did introduce some prior medical records from her treating physicians to support her appeal, which were admitted as administrative hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but cannot be used to support a finding.

After considering all the evidence introduced as well as arguments by the parties at the hearing, the ALJ denied Respondent's appeal. The ALJ found that the totality of the evidence and Dr. Hammesfahr's opinion established that Respondent is no longer substantially incapacitated from performing her duties as a Correctional Supervising Cook for Respondent CDCR. No other physician provided competent medical opinion to the contrary. The ALJ found that Respondent's condition has improved and no longer rises to the level of substantial incapacity. Furthermore, her condition is easily remediable with available treatment options which Respondent has not yet tried.

Accordingly, the ALJ found that Respondent is no longer substantially incapacitated for the performance of her usual duties as a Correctional Supervising Cook with Respondent CDCR on the basis of neurological conditions (migraines and cervical spine).

No new evidence has been presented by Respondent in her Petition for Reconsideration that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the April 16, 2024, meeting was well reasoned and based on the credible evidence presented at hearing.

For all the foregoing reasons, staff argues that the Board should deny the Petition for Reconsideration.

June 12, 2024

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Attorney