

ATTACHMENT B

Staff Argument

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

Natalie M. Cunningham (Respondent) was employed as a Community Services Officer II for the County of Riverside (Respondent County). By virtue of her employment, Respondent was a local miscellaneous member of CalPERS.

On April 13, 2023, Respondent County submitted an employer-originated application for disability retirement based on Respondent's psychological condition. On November 15, 2023, Respondent submitted her own application for disability retirement based on a psychological condition.

As part of CalPERS' review of Respondent's medical condition, Thomas Pyo, M.D., a board-certified Psychiatrist, performed an Independent Medical Examination (IME). Dr. Pyo interviewed Respondent, reviewed her work history and job descriptions; obtained a history of her past and present complaints, and reviewed her medical records. Dr. Pyo opined that Respondent was not substantially incapacitated from performing her job duties as a Community Services Officer II.

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 the medical documentation and the IME report, 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 November 18, 2024. Respondent represented herself at the hearing. Respondent County did not appear at the hearing and a default was taken as to Respondent County, pursuant to Government Code section 11520, subdivision (a).

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. Pyo testified in a manner consistent with his examination of Respondent and the IME report. Dr. Pyo confirmed his findings that Respondent is capable of performing her regular work as a Community Services Officer II even with her reported experiences of anxiety, depression, problems sleeping, and irritability which she attributed to discrimination she experienced in the workplace.

Dr. Pyo diagnosed Respondent with generalized anxiety disorder which did not rise to the level of substantial incapacity to return to her usual duties. Dr. Pyo opined that Respondent's symptoms were attitudinal and that her irritability was a result of interpersonal relationships at work. Dr. Pyo did not find her condition to be permanent.

Respondent testified on her own behalf that she worked well in her job for over 18 years. Her problems at work began when a new sheriff was hired who had favorites, including her supervising sergeant with whom she had previously clashed. Respondent claimed there were problems with favoritism and that her ability to work overtime was taken from her. Respondent described feeling emotional distress in her workplace, particularly when interacting with certain supervisors. Respondent offered into evidence a workers' compensation report which did not detail Respondent's diagnosis, symptoms, or the psychiatric condition that led to her claimed disability in the workers' compensation system. The report was admitted as administrative hearsay. Administrative hearsay may be used to supplement or explain other evidence but cannot be used to support a finding.

After considering all the evidence introduced as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent had the burden of proving her eligibility for disability retirement benefits, and she did not meet that burden. The ALJ found that Dr. Pyo's testimony was credible, consistent with the medical evidence, applied the correct legal standard for CalPERS disability retirement and was persuasive. The ALJ determined that although it would probably be interpersonally uncomfortable for Respondent to return to work, that is not enough to establish a disability. Thus, 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 changing the heading "Thomas Pyo, M.D., Qualified Medical Examination" to "Thomas Pyo, M.D., Independent Medical Examination" on page 4, as well as replacing the words "a qualified medical examination" to "an independent medical examination" on page 4, paragraph number 7. The Board also eliminates the references to *Hosford* and *English* on pages 9 and 10, paragraph number 6 as they relate to "industrial disability retirement," and corrects the case citation on page 10, paragraph number 6 to "*Smith v. City of Napa*" instead of "*Hawpe v. City of Napa*" of the Proposed Decision.

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

February 19, 2025

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Staff Attorney