

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Chandrika A. Bhatt (Respondent) was employed by the California Department of State Hospitals Atascadero (Respondent DSH) as a Food Service Technician II. By virtue of her employment, Respondent was a state safety member of CalPERS. On June 15, 2023, Respondent applied for disability retirement based on orthopedic conditions (lumbar spine, thoracic spine, and pelvis).

As part of CalPERS' review of Respondent's medical condition, G. Sunny Uppal, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Uppal interviewed Respondent, reviewed her work history and job description, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Uppal opined that Respondent did not have an actual or present orthopedic impairment rising to the level of substantial incapacity to perform her usual and customary job duties as a Food Service Technician II for Respondent DSH.

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 usual and customary 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 January 15, 2025. Respondent represented herself at the hearing. Personnel Officer Jaycob Javaux appeared at the hearing as a representative on behalf of Respondent DSH.

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. Uppal testified in a manner consistent with his examination of Respondent and the IME report. Dr. Uppal's medical opinion is that Respondent had a slight lumbar strain and spasm, but that it did not arise to the level of substantial incapacity. Her range of motion of her lumbar spine was only slightly decreased. Despite subjective complaints of pain, Dr. Uppal found that Respondent's thoracic spine and pelvis were essentially normal with no orthopedic

diagnosis or abnormalities. Dr. Uppal considered Respondent's diagnoses to be relatively minor and opined that Respondent was able to effectively treat her conditions using over-the-counter medications such as Tylenol. Based on his examination and review of Respondent's medical records, Dr. Uppal concluded that Respondent was not substantially incapacitated for the performance of her usual job duties due to any orthopedic condition.

Respondent testified that she still suffers from pain after her July 2021 injury. Respondent did not seek to admit any documents as evidence and did not call any witnesses to testify on her behalf. Respondent argued at the hearing that prophylactic work restrictions related to her workers' compensation case served as a basis to support her disability retirement application.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent did not prove by a preponderance of the evidence she is substantially incapacitated. Dr. Uppal's testimony and report were the only competent medical opinion presented for consideration at the hearing. Respondent presented no competent medical opinion to the contrary. The ALJ reasoned that Respondent's claimed prophylactic restrictions did not amount to substantial incapacity under Government Code section 20026. Accordingly, the ALJ concluded that Respondent was not substantially incapacitated for the performance of her usual and customary duties as a Food Service Technician II for Respondent DSH due to any orthopedic condition.

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

March 19, 2025

Bryan Delgado
Attorney