

ATTACHMENT B

STAFF'S ARGUMENT

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

Susan E. Heeger (Respondent) applied for disability retirement based on orthopedic (back and hip) conditions. By virtue of her employment as a Certified Nursing Assistant for Respondent Veterans Home of Redding, California Department of Veterans Affairs (Respondent CalVet), Respondent was a state miscellaneous member of CalPERS.

Respondent filed an application for service pending disability retirement on December 21, 2020. Respondent service retired effective January 18, 2021, and has been receiving benefits since that time.

As part of CalPERS' review of Respondent's medical condition, Robert K. Henrichsen, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Henrichsen interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed her medical records and imaging, and performed a comprehensive physical examination. Dr. Henrichsen opined that Respondent was not substantially incapacitated from performance of her job duties.

In order 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 March 16, 2022. Respondent represented herself at hearing. Respondent CalVet appeared at the hearing and was represented by counsel.

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. Henrichsen testified in a manner consistent with his examination of Respondent and the IME reports. Dr. Henrichsen's medical opinion is that Respondent's reported limitations did not align with the objective findings of the examination.

Dr. Henrichsen found no objective findings to support Respondent's complaints about symptom severity in his physical examination and review of Respondent's medical records, which included her imaging. Therefore, Dr. Henrichsen opined that Respondent is not substantially incapacitated from performing her Certified Nursing Assistant job duties.

Respondent testified on her own behalf that she is in pain "all the time." She testified about the physical requirements of her job as a Certified Nursing Assistant, and her limitations and inability to perform her job duties due to her condition. Respondent did not call any physicians or other medical professionals to testify, nor did she submit medical records to support her appeal.

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 did not establish, through competent medical evidence, that she is substantially incapacitated from performing her usual Certified Nursing Assistant job duties. The ALJ found Dr. Henrichsen's competent medical opinion was supported by the evidence, persuasive, and was based on objective medical evidence and not on Respondent's subjective complaints. The ALJ concluded that Respondent is not eligible for disability retirement.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." To avoid ambiguity, staff recommends correcting ". . . disability of permanent or extended and uncertain duration. . ." to ". . . disability of permanent or extended duration which is expected to last at least 12 consecutive months or will result in death. . ." in paragraph 1 of the Legal Conclusions section, on page 8 of the Proposed Decision.

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

June 15, 2022

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Attorney