

ATTACHMENT B

STAFF'S ARGUMENT

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

R.S.¹ (Respondent) signed an application for disability retirement on April 26, 2021, based on psychiatric (acute stress disorder) conditions. By virtue of her employment as a Senior Psychologist Specialist for R.J. Donovan Correctional Facility, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Matthew F. Carroll, M.D., a board-certified Psychiatrist, performed an Independent Medical Examination (IME). Dr. Carroll interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed her medical records, performed a mental status examination, and administered psychological testing. In his initial report, Dr. Carroll opined that Respondent was substantially incapacitated from performing her job duties because her ex-boyfriend might find and injure her. In a Supplemental IME report, Dr. Carroll opined that Respondent is not substantially incapacitated from performing her job duties because Respondent's fear of having to physically report to work at Respondent CDCR is a prophylactic restriction which does not qualify her as 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 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 February 13, 2023. Respondent represented herself at the hearing. Respondent CDCR did not appear at the hearing, and a default was taken as to Respondent CDCR pursuant to Government Code section 11520.

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.

¹ Respondent's initials were used in the Proposed Decision due to criminal incidents involving domestic violence (stalking). Some exhibits were redacted/sealed as ordered by the Protective and Sealing Order.

At the hearing, Dr. Carroll testified in a manner consistent with his examination of Respondent and the IME reports. Dr. Carroll explained Respondent's fear of physically working at CDCR involved speculation as to what could happen if her ex-boyfriend showed up at her work location. He explained this is a prophylactic restriction, which is a limitation "in case something happened in the future," rather than a substantial incapacity from performing her job duties. Dr. Carroll looked at the facts in Respondent's case, and found she was able to move to Maryland with her children, become a licensed psychologist, obtain employment as a psychologist, return to California, continue her employment as a psychologist with her Maryland employer by teleworking 30 hours a week, and still maintain her daily activities. Dr. Carroll opined that Respondent has mild post-traumatic stress disorder (PTSD), but she is able to function well, and she is able to physically work at CDCR. Therefore, Dr. Carroll's medical opinion is Respondent is not substantially incapacitated from performing her job duties.

Respondent testified on her own behalf about her employment history, her personal issues involving her ex-boyfriend, her psychiatric symptoms, and her current employment as a psychologist. Respondent did not call any physicians or other medical professionals to testify, nor did she submit medical reports 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 had the burden of proof and failed to demonstrate that she is substantially incapacitated from performing her Senior Psychologist Specialist job duties. The ALJ found that Respondent's fear is speculative, which does not qualify her for disability retirement. The ALJ found that she has mild PTSD, but she is still able to work and is currently working as a private practice psychologist. The ALJ found that the findings demonstrate that Respondent is able to perform the usual and customary functions of her position at CDCR and she is not incapacitated due to any psychiatric condition. 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 changing "January 13, 2023" to "February 13, 2023" on page 2 of the Proposed Decision; changing "CDRC" to "CDCR" on page 2 of the Proposed Decision; changing "August 8, 2022" to "August 11, 2022" in paragraph 6, under the Factual Findings section, on page 5 of the Proposed Decision; replacing "psychiatrist" with "psychologist" between "employment as a" and "with her Maryland employer" in paragraph 11, under the Factual Findings section, on page 7 of the Proposed Decision; and changing "extended and uncertain duration" to "extended duration, which is expected to last at least 12 consecutive months or will result in death" in paragraph 2, under Legal Conclusions section, on page 11 of the Proposed Decision.

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

April 18, 2023

Helen L. Louie
Attorney