

ATTACHMENT B

Staff Argument

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

Samantha Jennings (Respondent) worked for the County of Placer (Respondent County) as a Recorder/Elections Technician. On January 25, 2022, Respondent applied for disability retirement based on a COVID-19 long hauler post-acute sequelae condition (PASC). Her last day of paid earnings with Respondent County was November 20, 2020, and she requested a retirement date of December 31, 2021. By virtue of her employment with Respondent County, Respondent was a local miscellaneous member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Scott T. Anderson, M.D., a board-certified Rheumatologist, performed an Independent Medical Examination (IME) of Respondent. Dr. Anderson interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Anderson opined that Respondent was not substantially incapacitated from the performance of her usual and customary duties based on COVID-19 or PASC.

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 at the time she filed the application for disability retirement.

On April 27, 2022, CalPERS notified Respondent of its determination. Respondent appealed the 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 9, 2023. 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.

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. Anderson testified in a manner consistent with his examination of Respondent and his IME Report. Dr. Anderson explained the symptomology associated with COVID-19 and with PASC. Dr. Anderson then applied that symptomology to his examination of Respondent. Dr. Anderson found no convincing evidence that Respondent suffers from PASC. Dr. Anderson was not convinced that Respondent had ever been

infected with COVID-19 because her medical records show that while she took numerous tests for the disease, every one of them had a negative result. To the extent that Respondent suffered from an occasional cough and shortness of breath, Dr. Anderson attributed these symptoms to her pre-existing asthma and cigarette smoking. Dr. Anderson found no objective findings during examination or in her medical records to support her claimed incapacity. Dr. Anderson concluded that Respondent was not substantially incapacitated from the performance of her usual and customary duties.

Respondent testified on her own behalf at the hearing. Respondent testified that as a result of COVID-19 and its long-term effects, she has developed significant debilitating symptoms and physical limitations that prevent her from performing her job duties as a Recorder/Elections Technician for Respondent County. Respondent further testified that CalPERS failed to adequately consider her condition and symptoms, and that CalPERS' medical experts are not familiar with COVID-19 and its long-term effects.

Respondent did not call any witnesses, nor did she submit any medical records from her treating physicians to support her appeal.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent bears the burden of proof and did not meet her burden. The ALJ found that Respondent's testimony was primarily a recitation of subjective pain symptoms without objective support, and that she did not produce any evidence to prove that she has ever had any form of COVID-19. Further, Respondent called no medical expert to support her claimed limitations. Conversely, Dr. Anderson testified in detail regarding his evaluation, examination and review of Respondent's medical history and records. The ALJ found Dr. Anderson to be detailed, thorough, persuasive and his testimony was well-supported by the evidence.

The ALJ concluded that Respondent did not offer sufficient evidence to establish that when she applied for disability retirement, she was substantially and permanently incapacitated from performing the usual duties of a Recorder/Elections Technician for Respondent County. Therefore, the ALJ denied her appeal.

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 adding an s to the word "test" in line three of paragraph 22 on page 10 of the Proposed Decision; and adding "21076.5" to paragraph 1, subparagraph (a), line five under the Legal Conclusions on page 13, of the Proposed Decision such that it reads "Section 21076, 21076.5 or 21077."

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

June 20, 2023

Noelle Lamprecht
Senior Attorney