

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Danielle M. Jordan (Respondent) was a Parole Agent I for the Parole and Community Services Division, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of her employment, Respondent was a state safety member of CalPERS. On October 4, 2021, Respondent applied for Service Pending Industrial Disability Retirement (IDR) based on orthopedic conditions (bilateral elbow and bilateral hip). Respondent has been receiving service retirement benefits since October 31, 2021.

As part of CalPERS' review of Respondent's medical condition, Don T. Williams, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Williams interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Williams opined that the conditions of Respondent's elbows and hips did not substantially incapacitate her from performing her usual job duties as a Parole Agent I for Respondent CDCR.

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 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 October 3, 2024. Respondent represented herself at the hearing. Respondent CDCR did not appear at the hearing.

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. Williams testified in a manner consistent with his examination of Respondent and the IME report. Dr. Williams testified that Respondent has some slight tenderness over her right elbow but that she had good strength and full range of motion. Respondent's hips similarly showed normal range of motion and some mild tenderness. Dr. Williams found that Respondent's elbows and hips were reflective of

minor conditions and any lifting or movement restrictions or limitations described in the member's medical records were merely prophylactic to prevent further injury and not reflective of the member's physical capacity. Dr. Williams concluded that Respondent was not substantially incapacitated for the performance of her usual job duties as a Parole Agent I due to any orthopedic condition.

Respondent testified on her own behalf that she believes she cannot complete her job duties due to weakness and pain. Respondent did not call any physicians or other medical professionals to testify. Respondent also did not seek to have any documents admitted into evidence.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent failed to meet her burden of establishing by a preponderance of the evidence that she is substantially incapacitated. Furthermore, the only medical evidence that was admitted established that Respondent was not substantially incapacitated. The ALJ found that Dr. Williams presented competent medical evidence in his testimony through his examination and review of Respondent's medical records. Accordingly, the ALJ concluded that Respondent was not substantially incapacitated for the performance of her usual job duties as a Parole Agent I for Respondent CDCR due to orthopedic conditions when she applied for disability retirement.

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

November 20, 2024

Bryan Delgado
Attorney