

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Pamela Farrell-Webb (Respondent) was employed as a Management Services Technician by the Department of Developmental Services Administration. By virtue of her employment, Respondent became a state miscellaneous member of CalPERS subject to Government Code section 21150. Respondent applied for disability retirement, claiming disability on the basis of rheumatologic (fibromyalgia and chronic fatigue) and psychological conditions. CalPERS denied the application. Respondent then withdrew her appeal of the denial of her application based on a psychological condition, which she confirmed in writing. Subsequently, and ten days before the date of the hearing, Respondent notified CalPERS that she was dismissing her appeal of the denial of her application based on rheumatologic condition in its entirety, but refused to confirm her intention in writing.

In order to be eligible for disability retirement, an individual must demonstrate, through competent medical evidence, that he or she is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition that is the basis for the claimed disability must be permanent or of an uncertain and extended duration.

CalPERS retained Douglas Menzies Haselwood, M.D., a Diplomate of both the American Board of Internal Medicine and the American Board of Internal Medicine – Rheumatology, as its Independent Medical Examiner. Dr. Haselwood examined Respondent; reviewed her medical records, description of her job duties, and the physical requirements of her position; and prepared a report documenting his findings and conclusions. Dr. Haselwood concluded that Respondent was not substantially incapacitated from performing the usual and customary duties of her position. Accordingly, CalPERS denied Respondent's application for disability retirement. She appealed, and a hearing was held on September 20, 2012, by an Administrative Law Judge (ALJ) from the Office of Administrative Hearings.

Despite proper service on Respondent of the Statement of Issues and Notice of Hearing, Respondent did not appear at the hearing, and the matter was submitted for decision. The ALJ received and considered evidence demonstrating that Respondent had received proper and adequate notice of the hearing. Although Respondent contended that she was disabled, no documentary evidence or testimony was presented to support her contention that she was substantially incapacitated from the performance of her duties.

The ALJ noted that Dr. Haselwood prepared his report based on his review of a job duty statement for the position of Management Services Technician, which was deemed to be a sedentary position, and personally conducted a thorough rheumatological physical examination of Respondent. Dr. Haselwood wrote in his report that, "Ms. Farrell-Webb certainly has some legitimate sources of musculoskeletal discomfort to include age-appropriate degenerative and mechanical phenomenon and post-operative changes in the left knee. Unfortunately, the unusually high and incapacitating level of

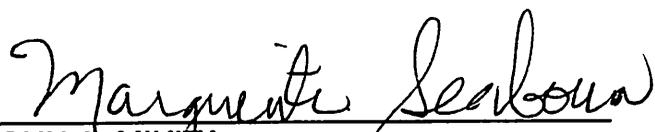
musculoskeletal pain, dysfunction and fatigue and resulting physical impairments perceived by Ms. Farrell-Webb are based, almost entirely, on subjective criteria and self-assertion. On the basis of the currently available medical record, historical and physical evidence [*sic*] I cannot confirm the diagnoses of the syndrome of fibromyalgia (as determined by the American College of Rheumatology) or the chronic fatigue syndrome (as determined by the Center for Disease Control)” Thus, Respondent was found not to be substantially incapacitated from the performance of her usual duties as a Management Services Technician.

In the Proposed Decision, the ALJ concludes that Respondent failed to meet her burden of proving that she is entitled to be retired for disability based on a rheumatologic (fibromyalgia and chronic fatigue) condition. In the absence of competent medical evidence and testimony, Respondent’s disability retirement application must be denied.

The ALJ’s Proposed Decision is consistent with the law and the facts. For the reasons stated above, staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

November 15, 2012

for 
JOHN A. MIKITA
Senior Staff Attorney