

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Debra J. Perez-Hasz (Respondent) was employed by the Department of Corrections and Rehabilitation (CDCR) as a Carpenter II. By virtue of her employment, Respondent is a state safety member of CalPERS.

Respondent applied for industrial disability retirement based on orthopedic injuries to her left carpal tunnel, left forearm and neck. Respondent also service retired and has been receiving benefits since that time.

CalPERS arranged for Respondent to be examined by an Independent Medical Examiner, Robert Hendrichsen, M.D., a board-certified Orthopedist. Dr. Hendrichsen concluded that Respondent's condition did not substantially incapacitate her from performing the usual and customary duties of her position as a Carpenter II.

Based on Dr. Hendrichsen's reports and other medical evidence, staff denied Respondent's application for industrial disability retirement. Respondent appealed the decision and a hearing was held on August 9, 2012.

Respondent was represented by counsel during the hearing. Prior to the hearing, CalPERS received medical records from Respondent, discussed the process with Respondent, made copies of the documents to be introduced at hearing, and suggested Respondent have a doctor testify by telephone. Respondent did not have a doctor testify.

Respondent and her former supervisor, Michael Junker, testified extensively about the duties of Respondent as a Carpenter II. Respondent claimed her position was quite physical and that the inmates who worked for her had very few job skills, so she did most of the work such as lifting heavy equipment and use of a jackhammer. Michael Junker refuted much of her testimony. He testified that inmates did most of the heavy lifting. The Carpenter II spends most of his or her time supervising the inmates. He also explained the inmates were interviewed and chosen for their job skills. The Administrative Law Judge (ALJ) heard very detailed testimony as to the usual and customary duties of the position.

At hearing, Dr. Hendrichsen testified that when he examined Respondent, he found she had good mobility and normal reflexes in both wrists and no evidence of atrophy. He also found no evidence of nerve entrapment in her wrist or forearm. He opined that she was not substantially incapacitated from her usual and customary duties as a Carpenter II based on a permanent medical condition. Dr. Hendrichsen also commented on the medical reports which were admitted as administrative hearsay by Respondent.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), Respondent has the burden of showing that she is substantially incapacitated from performing the usual duties in her position as a Carpenter II. Prophylactic restrictions and risk of possible future injury cannot support a finding of disability. (*Mansperger v. Pub. Employees' Ret. System* (1970) 6 Cal.App.3d 873; *Hosford v. Bd. of Administration* (1978) 77 Cal.App.3d 854.)

Additionally, under section 20026 of the California Public Employees' Retirement Law (PERL), "disability" and "incapacity for performance of duty" as a basis of retirement mean disability of permanent or extended and uncertain duration, as determined by the Board, on the basis of competent medical opinion. (Government Code section 20026.)

Based on the testimony of Dr. Hendrichsen, Michael Junker and Respondent, the ALJ found that Respondent did not meet the qualifications for industrial disability retirement. 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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

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