

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

At its November 15, 2012, meeting, the Board adopted the Proposed Decision of the Administrative Law Judge (ALJ) denying Respondent Debra J. Perez-Hasz' ("Respondent Perez-Hasz") application for industrial disability retirement.

Attorney Peter O. Slater represented Respondent Perez-Hasz throughout the discovery and hearing process. Her counsel presented documentary evidence of her medical condition which was admitted into evidence¹ and had her testify as to her job duties. Respondent Perez-Hasz had a fair hearing with notice, and opportunity to be heard. However, the ALJ found that Respondent Perez-Hasz failed to meet her burden of proof on appeal and that she was not substantially incapacitated from the usual and customary duties of her position as a Carpenter II.

The ALJ's findings are supported by the extensive medical records admitted at hearing, testimony of Respondent Perez-Hasz, Michael Junker, Respondent's former supervisor, and Independent Medical Examiner (IME) Dr. Robert K. Hendrichsen (Orthopedic Surgeon).

At the hearing, Dr. Hendrichsen testified that when he examined Respondent Perez-Hasz, 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 the ALJ.

In addition, Respondent Perez-Hasz and her former supervisor, Michael Junker, testified extensively about the duties of a Carpenter II. Respondent Perez-Hasz 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 the use of a jackhammer. Mr. 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 ALJ heard very detailed testimony as to the usual and customary duties of the position.

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

¹ . The medical reports were admitted as administrative hearsay and clearly discussed and considered by the ALJ as reflected in his decision.

Respondent Debra Perez Hasz' grounds for reconsideration in her letter are difficult to interpret. It appears she contends her counsel did not represent her well. She also takes issue with the ALJ's finding that Mr. Junker was the more credible witness as to what her duties were as a Carpenter II.

CalPERS' staff addresses the arguments below:

With respect to Respondent Perez-Hasz' complaints about her counsel, it is clear from the Proposed Decision that extensive evidence was taken and her counsel presented evidence pertaining to her duties and medical condition. The ALJ simply found against Respondent Perez-Hasz. She is not raising any new evidence or change in circumstances which would warrant reconsideration.

For all of the reasons stated above, staff recommends the Board deny the Petition for Reconsideration and uphold its decision.

Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. The respondents may file a writ petition in superior court seeking to overturn the decision of the Board.

December 12, 2012


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