

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Benjamin Navarrette (Respondent) was employed as a School Community Worker by the Long Beach Unified School District. By virtue of his 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 a psychological condition. CalPERS retained Stuart Shipko, M.D., Psychiatrist, as its Independent Medical Examiner. Dr. Shipko examined Respondent, reviewed his medical records and description of his job duties, and prepared reports documenting his findings and conclusions. Dr. Shipko concluded that Respondent was not substantially incapacitated from performing the usual and customary duties of his position. Accordingly, CalPERS denied Respondent's application for disability retirement. He appealed, and a hearing was held on November 8, 2012, by an Administrative Law Judge (ALJ) from the Office of Administrative Hearings.

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.

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 contends that he is disabled, no documentary evidence or testimony was presented to support his contention that he is substantially incapacitated from the performance of his duties.

The ALJ noted that Dr. Shipko prepared his reports based on his review of medical records from Respondent's health care providers. After receiving CalPERS' medical evidence, the ALJ determined that cause was not established to grant Respondent's application for a disability retirement, because Respondent failed to meet his burden of rebutting the evidence presented by CalPERS, and proving that he is entitled to be retired for disability based on a psychological condition. The ALJ noted that, while it might be difficult at times for Respondent to perform his duties, such does not qualify him for a disability retirement.

The ALJ's Proposed Decision is supported by the law and the facts. 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. The member may also file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

February 21, 2013



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