

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Gary Cooper (Respondent) was employed by the Martinez Unified School District as a Custodian. By virtue of his employment, Respondent is a local miscellaneous member of CalPERS.

Respondent applied for disability retirement based on orthopedic injuries. He described his limitations as "neck damage, shoulder right side arms, hands right knee, lower back. Repetitive strains and fall." He further explains "my work restrictions were too severe for my employer . . . they let me go since I couldn't perform my usual and customary work after 17 years of service."

CalPERS arranged for Respondent to be examined by an Independent Medical Examiner, Dr. John Lang, a board-certified Orthopedist. Dr. Lang concluded that Respondent's condition did not substantially incapacitate him from performing the usual and customary duties of his position as a Custodian. After reviewing Dr. Lang's reports and other medical evidence, staff denied Respondent's application for disability retirement. Respondent has since service retired.

Respondent appealed the decision and a hearing was held on January 14, 2013.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), Respondent has the burden of showing that he is substantially incapacitated from performing the usual duties in his position as a Custodian. 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.)

Respondent represented himself with the aid of his daughter and provided medical documents to CalPERS as part of discovery. The Martinez Unified School District did not appear at the hearing. Prior to the hearing, Dr. Lang passed away. As a result of the unavailability of physicians, the parties stipulated to the introduction of all relevant medical reports.

After review of the medical reports, the Administrative Law Judge (ALJ) concluded that Respondent's appeal should be denied. The ALJ cites extensively to the detailed report of Dr. Lang as the basis for her finding that there were no specific job duties that Respondent was unable to perform because of his physical condition.

The 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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

March 20, 2013



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