

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Theresa Mena (Respondent) was employed as an Early Education Center Aide by the Los Angeles Unified School District (LAUSD), which contracted with CalPERS to provide retirement benefits to its employees. By virtue of her employment, Respondent was a local miscellaneous member of CalPERS. Respondent submitted an application for disability retirement on the basis of claimed orthopedic (lower back and ankle) conditions. Staff reviewed relevant medical reports and a written description of Respondent's usual and customary job duties. Theodore Georgis, Jr., M.D., a board-certified Orthopedic Surgeon, examined Respondent and reviewed applicable medical records. In a written report, Dr. Georgis expressed his opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of an Early Education Center Aide. CalPERS denied Respondent's application for disability retirement. Respondent appealed this determination and a hearing was held on January 30, 2013.

In order to be eligible for disability retirement, competent medical evidence must demonstrate that the individual 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 extended and uncertain duration.

At the hearing, the Administrative Law Judge (ALJ) found that Respondent had received proper notice of the hearing. Respondent did not appear at the hearing. Accordingly, the ALJ granted a request for a default judgment against Respondent and proceeded to receive evidence and testimony offered in support of CalPERS determination to deny Respondent's application for disability retirement.

In April 2008, Todd D. Moldawer, M.D., a board-certified Orthopedic Surgeon, performed surgery on Respondent's lumbar spine. Following an approximate one year period of recovery and rehabilitation, in a March 2009 written report, Dr. Moldawer wrote, in relevant part: "I feel that [Respondent] can return to back to work without restrictions."

Dr. Georgis prepared a written report regarding his examination of Respondent and review of applicable medical reports. In his report Dr. Georgis stated his opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of an Early Education Center Aide for the LAUSD. At the hearing, Dr. Georgis repeated this opinion.

The ALJ found that Respondent did not present any evidence in support of her appeal. Accordingly, the ALJ concluded that good cause exists to sustain CalPERS denial of Respondent's application for disability retirement and that the appeal should be denied.

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 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.

April 17, 2013

for Marquette Seaborn
RORY J. COFFEY
Senior Staff Attorney