

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Nancy Fairfield (Respondent) was employed by the Placer County Office of Education as a Staff Secretary II. Her duties included administrative and clerical functions, and required interaction with people in person and on the telephone. Respondent resigned and filed an application for disability retirement three years later, claiming disability on the basis of orthopedic, neurological, and dental conditions.

In order to be eligible for disability retirement, an individual must demonstrate, through competent medical evidence, that she or he is substantially incapacitated from performing the usual and customary duties of her or his position. The injury or condition that is the basis for the claimed disability must be permanent or of an uncertain and extended duration.

Staff reviewed Respondent's medical records and description of her job duties and the physical requirements of her position.

At the request of CalPERS, Respondent was evaluated by Dr. Jeffrey Light, D.D.S., a licensed Dentist; Joseph McCoy, M.D., a board-certified Orthopedic Surgeon; and Eric W. Van Ostrand, M.D., a board-certified Neurologist. All three doctors examined her, reviewed the medical records she had submitted, and reviewed descriptions of her job duties and the physical requirements of her position. They all concluded that Respondent was not substantially disabled from performing the usual and customary duties of her position. After staff denied Respondent's application, she appealed, and a hearing was held on January 16, 2013.

Respondent was present at the hearing and represented herself. She submitted medical reports from several physicians, but none of these physicians testified and Respondent did not present their qualifications or bases for their opinions. Respondent and her husband testified that Respondent is an alcoholic. She testified that she had two automobile accidents, after she resigned from her position. She stated she is unable to perform her job duties due to short-term memory loss, inability to find words, and she is not able to write letters with proper spelling.

Dr. Light testified that Respondent had told him that she had numbness in her lower jaw and she felt it made her speech difficult and she thought people might not understand her, although it did not affect her ability to perform her job. Dr. Light observed that she had some difficulty pronouncing some words, but he was able to understand her easily and he did not find any dental condition that would prevent her from performing her duties. He testified that she is not substantially incapacitated for the performance of her usual and customary duties.

Dr. McCoy testified that Respondent had persistent atrophy of her right calf and normal range of motion in her hands, fingers and she had normal wrists, although her grip strength was mildly impaired on the left. Dr. McCoy testified that Respondent is not substantially incapacitated for the performance of her usual and customary duties.

Dr. Van Ostrand testified that he performed a neurological examination of Respondent and found no neurological abnormalities and no neurological condition which precluded her from performing her job duties. He testified that her speech and language functions were normal, concentration was normal and her short-term recall was intact. Dr. Van Ostrand opined that from a neurological perspective, Respondent is not substantially incapacitated for the performance of her usual and customary duties.

In the Proposed Decision, the Administrative Law Judge (ALJ) concludes that Respondent did not meet her burden of proof. She did not present competent medical evidence to establish that she is permanently disabled or incapacitated from performing the usual duties of her position.

The well-established case law in *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873 and *Hosford v. Board of Administration of the Public Employees' Retirement System* (1978) 77 Cal.App.3d 854, as cited in the Proposed Decision, states that disability under the CalPERS system requires substantial incapacity to perform the usual duties of the applicant's position. Discomfort, which makes it difficult to perform ones duties, is insufficient to establish permanent incapacity from performance of one's position.

The ALJ concluded that Respondent's 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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

April 17, 2013


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