

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION AFTER REMAND**

Annette L. Norton (Respondent) was employed by the County of Shasta (County) as an Employment and Training Worker II (ETW). Shasta County was a contracting agency with CalPERS. 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 (right hand, wrist, arm pain and cervical pain) conditions. Staff reviewed applicable medical records and a written description of Respondent's usual and customary job duties. Baer Rambach, M.D., a board-certified Orthopedic Surgeon, reviewed medical records, a job description and performed an Independent Medical Examination (IME) of Respondent. Dr. Rambach prepared a written report in which he expressed his opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of her position as an ETW with the County. CalPERS denied Respondent's application for disability retirement. Both Respondent and the County appealed. A hearing was held on December 8, 2011, and March 6 and 12, 2012.

The Administrative Law Judge (ALJ) issued a Proposed Decision which granted Respondents' appeal. The Proposed Decision was presented to and considered by the Board at its June 2012 meeting. The Board rejected the Proposed Decision and remanded the matter for the purpose of showing how competent medical opinion established that Respondent was substantially incapacitated from performing her usual and customary job duties.

The matter was set for remand hearing on January 31, 2013. The CalPERS Independent Medical Examiner (IME), Baer Rambaugh, M.D., was not available to appear at the hearing. Respondent and the County did not present any new evidence, whether documentary or testimonial. Respondent did offer additional argument in support of her appeal.

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

Respondent described her duties as an ETW, which included meeting with clients, use of a computer keyboard and mouse and the handling of case files. Respondent testified regarding her complaints of pain and numbness involving her hands (bilaterally) and pain in her right arm and neck. Respondent described the course of her treatment between 2003 and the present. Respondent testified that her condition prevents her from performing the usual and customary duties of the ETW position.

Medical reports regarding evaluation and treatment of Respondent by various physicians and other health care professionals were received into evidence. Respondent called Farad Sabet, M.D., her current primary treating physician, to testify on her behalf. Dr. Sabet testified that Respondent's complaints are due to a pinched nerve in her cervical spine. Dr. Sabet testified that Respondent has degenerative disc disease in her cervical spine and that there are tears in the disc material at the levels of C5, C6 and C7. This condition (neuropathic pain), according to Dr. Sabet, explained Respondent's complaints and was/is of sufficient severity that, in his opinion, she was/is substantially incapacitated from performing her usual and customary duties as an ETW.

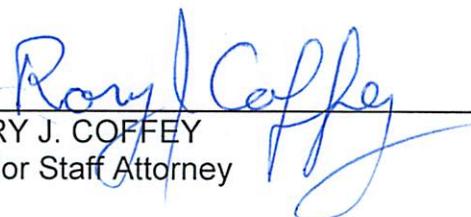
Copies of Dr. Rambach's initial and supplemental reports were received into evidence. Dr. Rambach testified that, in his opinion, Respondent has chronic, but mild, bilateral carpal tunnel syndrome, lateral epicondylitis (tennis elbow) in her right arm and cervical strain, superimposed on degenerative disc disease in her cervical spine. Dr. Rambach did not feel that any one condition, nor all conditions taken together, would render Respondent incapable of performing her usual and customary duties.

After considering all of the evidence and testimony, the ALJ found that there was sufficient competent medical evidence to demonstrate that Respondent was/is substantially incapacitated from performing her usual and customary duties as an ETW. Accordingly, the ALJ granted Respondent's appeal and concluded that Respondent should be granted disability retirement.

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, which is unlikely, as the Decision is in her favor.

April 17, 2013

  
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Senior Staff Attorney