

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

The hearing on this case was completed November 29, 2012. Following the hearing, a Proposed Decision was issued on December 21, 2012. The Decision was in favor of CalPERS (denial of Respondent's application for disability retirement because she was not permanently disabled or incapacitated from performance of her usual duties). The Board voted to adopt the Proposed Decision on February 21, 2013. Stacey Allen (Respondent) submitted this Petition for Reconsideration on March 21, 2013.

Respondent was employed by Respondent California Department of Motor Vehicles as a Motor Vehicle Field Representative. A Motor Vehicle Field Representative's duties include processing documents, collecting fees, issuing receipts and entering transaction information in automated systems. Respondent applied for disability retirement on the basis of an orthopedic condition in her right shoulder.

Staff reviewed Respondent's medical records and descriptions of her job duties and the physical requirements of her position. Respondent was evaluated by James G. Fischer, M.D., a board-certified Orthopedic Surgeon. Dr. Fischer concluded that Respondent was not substantially disabled from performing the usual and customary duties of her position.

Respondent did not appear at the hearing, and was not otherwise represented at the hearing. The Notice of Hearing was properly served on Respondent at the address listed on her application for disability retirement, and the matter proceeded as a default hearing against her.

At the hearing, Dr. Fischer testified Respondent could substantially perform her duties as a Motor Vehicle Field Representative. He testified that Respondent does suffer from a frozen shoulder, ulnar nerve impingement, and a mild trigger finger. He testified that her conditions are resolvable by relatively routine surgeries with an excellent prognosis for each. The medical evidence shows clearly that Respondent's shoulder condition does not prevent her from performing her usual duties.

In the Proposed Decision, the Administrative Law Judge (ALJ) concluded that Respondent did not meet her burden of proving by a preponderance of the evidence that she is substantially and permanently incapacitated from performing the normal and usual duties of her position.

The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts, and the Board adopted the Proposed Decision on February 21, 2013.

Respondent's grounds for reconsideration are based on disagreement with the ALJ's findings and legal analysis, complications of her current medical condition, inability to track and maintain information, and obtaining legal counsel.

CalPERS' staff addresses the arguments below:

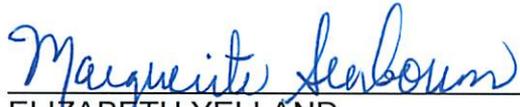
Respondent was properly served with the Statement of Issues and Notice of Hearing, but did not appear on her own behalf and was not otherwise represented at hearing. While Respondent may disagree with the ALJ's findings of fact and legal analysis, it is clear that she knew the date and time of hearing, that the hearing would be conducted whether she was present or not, and that CalPERS would complete its case. At hearing, evidence was taken on the underlying facts, and competent medical opinion was received into evidence. The ALJ analyzed the proper California Public Employees' Retirement Law sections relevant to disability retirement. The ALJ simply found against Respondent. Respondent has not raised any new evidence or change in circumstances which would warrant reconsideration.

As to obtaining legal counsel, CalPERS wrote a letter to Respondent dated August 31, 2010, where CalPERS recommended that Respondent retain a lawyer to represent her interests at the hearing. CalPERS also notified her that she should retain counsel as soon as possible, since most attorneys' calendars are filled months in advance. This letter was sent more than 2 years before the hearing was conducted. CalPERS again notified Respondent of her right to retain counsel on November 13, 2012, approximately 3 weeks before hearing. Nevertheless, Respondent elected not to retain counsel.

For all of the reasons stated above, staff argues the Board deny the Petition for Reconsideration and uphold its decision.

Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. Respondent may file a Writ Petition in superior court seeking to overturn the decision of the Board.

April 17, 2013.


for ELIZABETH YELLAND
Senior Staff Attorney