

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Catherine Garbacz (respondent) was employed by respondent Department of Rehabilitation as a Senior Vocational Rehabilitation Counselor. By virtue of her employment, respondent is a local miscellaneous member of CalPERS. Respondent submitted an application for disability retirement on the basis of orthopedic conditions. Respondent was denied disability retirement and she appealed.

This appeal is limited to the issue of whether respondent is permanently incapacitated from performance of her duties as a Senior Vocational Rehabilitation Counselor with respondent Department of Rehabilitation on the basis of her orthopedic (carpal tunnel syndrome, right shoulder) conditions.

As part of the review of respondent's disability application, staff reviewed medical reports regarding her condition, her job description and her workers' compensation file. Respondent was sent to Erin E. Forest, M.D., an Independent Medical Examiner (IME) and board-certified Orthopedic Surgeon, who examined respondent, reviewed medical reports and the written job descriptions. In her report, Dr. Forest concluded that respondent was not substantially incapacitated from performing the usual and customary job duties of a Senior Vocational Rehabilitation Counselor.

The Statement of Issues and Notice of Hearing were properly served on respondent on August 30, 2012. The Exhibit List, containing another copy of the Statement of Issues and Notice of Hearing was sent to the member for review a week before the hearing, on January 30, 2013. The Statement of Issues and the Notice of Hearing were made Exhibits 1 and 2, to the hearing, respectively. Hearing on the matter was held on February 7, 2013. Despite being served with the Notice of Hearing at least twice, Respondent did not show up and was not represented. CalPERS requested, and the ALJ agreed, to conduct the hearing as a default. CalPERS presented evidence of respondent's "usual duties" as a Senior Vocational Rehabilitation Counselor (typing, filing, writing, sitting and "signing" with the use of ASL).

CalPERS also presented testimony of IME Dr. Forest, who examined respondent, reviewed her medical records and completed relevant testing. Dr. Forest opines that respondent is not substantially incapacitated and not disabled. Dr. Forest concluded that while respondent had some impairment that warranted some work restrictions, her work restrictions were excessive. Nevertheless respondent was accommodated, and respondent told Dr. Forest that she was working well through the accommodations. Dr. Forest felt that respondent was an asset to the Department of Rehabilitation, and her work was not contributing to any damage as far as her carpal tunnel syndrome was concerned.

After reviewing the evidence, the ALJ found that Dr. Forest is a well-qualified orthopedic surgeon, and her medical opinion was reasonable, supported by the evidence and not refuted. Thus, the ALJ found that Dr. Forest's opinion is credible, reliable, and persuasive in this case.

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 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.

May 15, 2013


ELIZABETH YELLAND
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