

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Pamela Battle (Respondent) was employed as a Psychiatric Technician by the Department of Developmental Services, Lanterman State Hospital. By virtue of her employment, Respondent was a State miscellaneous member of CalPERS. Respondent submitted an application for disability retirement on the basis of claimed orthopedic (neck, back, knees and wrist) conditions and psychological conditions.

CalPERS staff reviewed copies of relevant medical reports and a written description of Respondent's usual and customary job duties. Satish K. Lal, M.D., a board-certified Orthopedic Surgeon, examined Respondent, reviewed relevant medical records and a written job description of Respondent's usual and customary job duties. Dr. Lal prepared a written report, which contained his observations, findings, conclusions and ultimate opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of her position as a Psychiatric Technician. Respondent was also evaluated by Peter J. Weingold, M.D., a board-certified Psychiatrist. Dr. Weingold reviewed applicable medical reports and Respondent's job description. Dr. Weingold prepared a written report in which he offered his opinion that Respondent was not substantially incapacitated on the basis of a claimed psychological condition. CalPERS staff denied Respondent's application for disability retirement. Respondent appealed this determination and a hearing was held on July 3, 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 which is the basis of the claimed disability must be permanent or of an extended and uncertain duration.

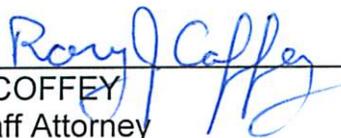
Respondent testified at the hearing and offered copies of various medical reports into evidence, which the Administrative Law Judge (ALJ) received as administrative hearsay. The reports of Dr. Lal and Dr. Weingold were also received into evidence and their contents considered by the ALJ.

After considering all of the evidence and testimony, the ALJ found that Respondent had not satisfied her burden of proving, through competent medical evidence, that, at the time that she submitted her application for disability retirement, she was substantially incapacitated from performing the usual and customary duties of a Psychiatric Technician. The ALJ found that the medical evidence "overwhelmingly" demonstrated that Respondent would be able to return to her usual job as a Psychiatric Technician.

The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. CalPERS 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.

September 18, 2013



RORY J. COFFEY
Senior Staff Attorney