

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Roxanne Stanley (Respondent) was employed by the Fallbrook Union Elementary School District (District) as a School Bus Driver. The District contracted with CalPERS to provide retirement benefits to its employees. By virtue of her employment, Respondent was a local miscellaneous member of CalPERS. Respondent submitted an application for Industrial Disability Retirement (IDR) on the basis of claimed internal (asthma) and psychological (stress/depression) conditions. Staff reviewed relevant medical and psychological reports regarding Respondent's condition and a written description of her usual and customary job duties. Respondent was evaluated by Kristof Siciarz, M.D., a specialist in Internal Medicine, and Marc Capobianco, M.D., a board-certified Psychiatrist. Both Dr. Siciarz and Dr. Capobianco prepared written reports, following their evaluation of Respondent and review of records, in which they expressed their opinions, respectively, that Respondent was not substantially incapacitated from performing her usual and customary duties as a School Bus Driver for the District.

Staff denied Respondent's application for IDR. Respondent appealed CalPERS determination and a hearing was held on January 15, 2013, and on August 1 & 2, 2013.

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 their position. The injury or condition which is the claimed basis for the disability must be permanent or of an extended and uncertain duration.

Respondent testified at the hearing, describing her usual and customary duties as a School Bus Driver for the District. Respondent also described experiencing breathing problems in 2005, which she believed were caused by exposure to fumes from a leak in the exhaust system of the bus that she drove for the District. Respondent also described long running conflict between her and her managers/supervisors and co-workers at the District, which Respondent believed caused her to experience stress and depression. Respondent offered copies of various medical reports, which were received into evidence by the Administrative Law Judge (ALJ).

Dr Siciarz testified that Respondent's presentation or condition was consistent with a diagnosis of asthma. He also testified that if Respondent's condition were correctly diagnosed as asthma, then he did not believe that she was substantially incapacitated from performing her duties as a School Bus Driver for the District.

At the hearing, Dr. Siciarz was provided with additional medical reports indicating that Respondent's complaints regarding breathing were caused by a condition known as Paradoxical Vocal Cord Dysfunction (PVCD). Dr. Siciarz was familiar with PVCD and stated that it is a valid, recognized diagnosis or condition. Dr. Siciarz testified that the

symptoms of PVCD are very similar to those of asthma and that the only way a diagnosis of PVCD can be made is by the performance of a specific test which involves visualization of the vocal cords using a scope. Such a test was performed on Respondent after she had been examined by Dr. Siciarz. The test confirmed a diagnosis or the existence of a permanent condition of PVCD. Dr. Siciarz testified that exposure to petroleum products, including diesel fumes, exposure to other environmental factors and stress could cause PVCD attacks, which makes breathing difficult. On that basis, Dr. Siciarz changed his opinion and testified that Respondent was substantially incapacitated from performing her usual and customary duties as a School Bus Driver for the District.

After considering all of the evidence and testimony, the ALJ concluded that competent medical evidence demonstrated that Respondent was substantially incapacitated from performing her usual and customary duties as a School Bus Driver for the District. Accordingly, the ALJ granted Respondent's appeal and ordered that "Respondent qualifies for Industrial 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.

October 16, 2013



RORY J. COFFEY
Senior Staff Attorney