

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

In this case, Jacqueline Guillory (Respondent) applied for Industrial Disability Retirement, based on orthopedic conditions (bilateral carpal tunnel syndrome, bilateral elbow tendonitis, lateral epicondylitis and bilateral shoulder impingement). By virtue of her employment as a Registered Nurse (RN) for respondent Department of Corrections and Rehabilitation, State Prison Los Angeles County, she was a state safety member of CalPERS. Two days of hearing were completed on March 7 and August 28, 2013.

Prior to hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided her with a copy of the administrative hearing process handbook. CalPERS answered her questions, and provided her with information to obtain further information. While CalPERS did object to some of the documents Respondent introduced at hearing, all Respondent's exhibits were admitted into evidence and considered by the Administrative Law Judge (ALJ). Respondent also provided testimony on her own behalf.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Pierre Hendricks. Dr. Hendricks interviewed Respondent, and obtained Respondent's summary of her medical history, treatment, work history, recreational activities, and present complaints. Dr. Hendricks reviewed all of Respondent's prior medical records.

Dr. Hendricks testified that Respondent is not substantially incapacitated for the performance of her usual duties as an RN for the Department of Corrections. He found that she has bilateral carpal tunnel syndrome that was treated with release surgery and steroid injection. Her surgery resulted in some residual decreased sensation in both hands, but that does not preclude work activities. Dr. Hendricks testified that she had no objective evidence of residual impairment.

Of note, Dr. Hendricks explained how during testing and evaluations Respondent exhibited sub-maximal gripping effort. He explained how objective medical evaluations indicating that whatever pain she experienced, the pain did not rise to a level of severity precluding her continuing performance of her usual work duties. Dr. Hendricks questioned whether Respondent put forth her best effort during testing. He also questioned her claims about pain in her right shoulder tendons and both hands, which were inconsistent with her diagnosis, suggesting that she embellished her symptoms. No medical evidence was offered to refute his findings.

Dr. Hendricks' expert medical opinion was that any pain Respondent might experience constitutes an "annoyance" which does not affect her job performance. He opined that any moderate pain might require additional time for her to perform her usual duties.

The ALJ held that Respondent did not sustain her burden of proof to establish that she has a substantial inability to perform her usual duties as an RN for the Department of Corrections. Respondent had introduced summaries and excerpts from various medical

records, but none of the physicians who authored those medical records were present at hearing to explain their findings and medical conclusions.

The ALJ found Dr. Hendricks provided persuasive testimony elucidating Respondent's symptoms, cause, treatment and physical limitations. Dr. Hendricks' credible, competent medical opinion refuted findings in other medical records. The ALJ found that the totality of the evidence does not establish that Respondent is qualified for Industrial Disability Retirement.

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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

November 20, 2013


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