

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Kathy T. Ledesma (Respondent) applied for disability retirement on the basis of an orthopedic condition (separated pelvis). By virtue of her employment as an Associate Information Systems Analyst with the California Franchise Tax Board (Respondent FTB), she was a state miscellaneous member of CalPERS. A hearing was completed on September 18, 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 and called her husband as a witness.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to board-certified Internist Nariender Singh Dhaliwal, M.D. (IME Dhaliwal). IME Dhaliwal interviewed Respondent, and obtained Respondent's summary of her medical history, treatment, work history, recreational activities, and present complaints. IME Dhaliwal also reviewed Respondent's prior medical records, took an oral history from Respondent, and performed a comprehensive physical examination. At the time of the examination, IME Dhaliwal noted that Respondent was currently four months pregnant and due to the pregnancy, it was not a good time to perform a permanent disability evaluation; however, IME Dhaliwal did conclude that at that time, Respondent was substantially incapacitated on a temporary basis.

Respondent returned to IME Dhaliwal approximately eleven months later for a re-examination. IME Dhaliwal performed another physical examination and reviewed a recent MRI scan. IME Dhaliwal concluded in his report, and competently testified in a consistent manner at the hearing, that Respondent was not substantially incapacitated for the performance of her usual duties as an Associate Information Systems Analyst.

Respondent did not offer any medical testimony at hearing. Rather, she introduced reports from Doctors Patel, Scott, Segovia and Zeballos. The ALJ found that the report from Dr. Patel was not persuasive because Dr. Patel's conclusions were based solely on Respondent's subjective complaints of pain. Similarly, the ALJ did not find Dr. Segovia's or Dr. Zeballos' reports persuasive as they relied heavily on Dr. Patel's assessment. Lastly, the ALJ did not find Dr. Scott's report persuasive because it was not based on any objective criteria and no opinion was given regarding Respondent's ability to perform her usual job duties.

The ALJ also noted that Respondent's ability to travel by car from Texas to California on at least three occasions and testify from a sitting position for nearly an hour demonstrated her ability to sit for substantially longer than the 30 minute intervals she had claimed was a limitation.

The ALJ concluded that Respondent failed to establish that she was substantially unable to perform her usual job duties, and therefore, was not entitled to 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.

December 18, 2013



CHRISTOPHER PHILLIPS
Staff Attorney