

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

The hearing in this case was completed on August 29, 2013. Following the hearing, a Proposed Decision was issued on September 6, 2013. The Proposed Decision affirmed the determination of CalPERS staff (denying Respondent Roberson's eligibility to receive disability retirement.) The Board voted to adopt the Proposed Decision at its meeting on October 16, 2013. Respondent James Roberson submitted this Petition for Reconsideration dated November 18, 2013.

Respondent Roberson is a retired member, previously employed by the Department of General Services (DGS) as a custodian, a miscellaneous member of CalPERS. Respondent Roberson applied for service retirement pending a determination on disability retirement. CalPERS denied the application for disability retirement. Respondent Roberson pursued an administrative appeal of that denial.

At the hearing, Respondent Roberson was represented by an attorney. The hearing on this matter took two days, July 25, 2013 and August 29, 2013. Respondent Roberson attempted to establish that he was unable to return to work due to orthopedic conditions (lower back and shoulder), as well as psychological conditions. Respondent Roberson presented one medical witness, his pain management physician, and testified himself. He did not present any evidence of a psychological condition. He testified, as did his physician, that he experienced chronic pain. Respondent Roberson testified that the pain made him depressed. Respondent Roberson noted that he was receiving Social Security and Workers' Compensation for his injuries.

CalPERS presented as witnesses an orthopedic physician and a psychiatrist. The orthopedist concluded that Respondent Roberson was not substantially incapacitated by his injury, and that he is able to work at his prior position. The psychiatrist concluded that Respondent Roberson is not psychologically incapacitated from his job duties, and although the psychiatrist initially accepted Respondent Roberson's claims that he was physically incapacitated, the psychiatrist did not examine him physically and eventually came to believe that he is not physically incapacitated.

The Administrative Law Judge (ALJ) determined that the orthopedic conditions were not sufficiently substantiated by the medical testimony as permanently disabling, and that disability retirement on that basis should be denied. The ALJ admitted and reviewed many medical reports, and determined that the weight of the evidence supported CalPERS' determination. The ALJ also found that the Respondent Roberson failed to present evidence to establish a disability retirement based on psychological conditions. The ALJ sustained the CalPERS denial of Respondent Roberson's application for disability retirement and recommended that the appeal should be denied. The Board accepted that Proposed Decision as its own.

Respondent Roberson's grounds for reconsideration are based on disagreement with the ALJ's findings and legal analysis. CalPERS staff addresses the arguments below:

Respondent Roberson presented medical testimony that was insufficient, particularly in the face of credible contradictory medical opinion, to establish a substantial incapacity for Respondent Roberson to perform his job duties. Although Respondent Roberson has other findings from other systems, the Workers' Compensation System and the Social Security Administration exist for entirely different reasons, and with different disability criteria and procedures, and do not establish the burden of proof required by CalPERS (*Smith v. City of Napa* (2004) 120 Cal.App.4th 191, 207).

Respondent Roberson has not raised any new evidence or change in circumstances that would warrant reconsideration.

For all of the reasons stated above, staff argues the Board deny the Petition for Reconsideration and uphold its Decision.

Because the Decision applies the law to the facts of this case, the risks of denying the Petition for Reconsideration are minimal. Respondent may file a Writ Petition in Superior Court.

December 18, 2013

for 
CYNTHIA A. RODRIGUEZ
Senior Staff Attorney