

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Debera A. Pagliaroli (respondent Pagliaroli) was employed as a Program Technician at Department of Rehabilitation. By virtue of her employment, respondent Pagliaroli is a state miscellaneous member of CalPERS subject to Government Code section 21150.

Respondent Pagliaroli claims an orthopedic condition. In her application for disability retirement, respondent Pagliaroli claimed she had pain in her hands and back. She further stated she "cannot do the essential functions of the job without severe pain." Respondent Pagliaroli service-retired and has been receiving service retirement benefits.

CalPERS arranged for respondent Pagliaroli to be examined by an Independent Medical Examiner, Dr. Mohinder Nijjar, a board-certified Orthopedic Surgeon. Dr. Nijjar found that she was not substantially incapacitated from the usual and customary duties of a Program Technician.

After reviewing Dr. Nijjar's reports and other medical evidence, staff denied respondent Pagliaroli's application for disability retirement. Respondent Pagliaroli appealed the decision and a hearing was held on October 31, 2013.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), respondent Pagliaroli has the burden of showing that she is substantially incapacitated from performing the usual duties in her position as a Program Technician. Prophylactic restrictions and risk of possible future injury cannot support a finding of disability. (*Mansperger v. Pub. Employees' Ret. System* (1970) 6 Cal.App.3d 873; *Hosford v. Bd. of Administration* (1978) 77 Cal.App.3d 854.)

Respondent Pagliaroli did not appear at hearing.¹ Respondent Pagliaroli was notified of the hearing on March 14, 2013, by the Notice of Hearing. At the hearing, Respondent Pagliaroli was called on the phone and she stated she forgot about the hearing; she was leaving the state and did not ask for a continuance of the hearing, so the hearing proceeded as a default against both respondents.

Dr. Nijjar testified and explained that respondent Pagliaroli had some degenerative changes and that they were not of such a nature that she could not perform the essential functions of her position as a Program Technician.

The ALJ explained respondent Pagliaroli failed to meet her burden of proof and concluded that respondent Pagliaroli'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.

¹ The Department of Developmental Services did not appear at the hearing.

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 motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

February 20, 2014



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