

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Carla Ivory (respondent Ivory) was employed as a Program Technician at Department of Corrections and Rehabilitation (Respondent Corrections). By virtue of her employment, respondent Ivory is a State industrial member of CalPERS subject to Government Code sections 20048 and 21150.

Respondent Ivory claims both a psychological and an orthopedic injury. In her application for disability retirement, respondent Ivory claimed she hurt her back when she bent over to put files in a cart. On her application, she stated she was in pain and she also states she cried all the time because she lost her job.

CalPERS arranged for respondent Ivory to be examined by two Independent Medical Examiners, Dr. Oluwafemi Adeyemo, a Board-Certified Psychiatrist and Dr. Mohinder Nijjar, a Board-Certified Orthopedic Surgeon. Both Dr. Nijjar and Dr. Adeyemo found that she was not substantially incapacitated from the usual and customary duties of a Program Technician.

After reviewing Dr. Adeyemo's report, Dr. Nijjar's report and other medical evidence, staff denied respondent Ivory's application for disability retirement. Respondent Ivory appealed the decision and a hearing was held on October 1, 2013.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), respondent 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 Ivory represented herself with the assistance of her sister.¹ Weeks prior to the hearing, CalPERS sent all exhibits to respondent Ivory. Over the six-month period before the hearing, CalPERS staff had multiple discussions with respondent Ivory about the procedure and her need to present medical reports at the hearing. In addition, staff assisted respondent Ivory by providing subpoena documents so she could subpoena her doctor to testify at hearing. However, respondent Ivory did not have a doctor testify and provided no medical reports at the hearing.

Dr. Nijjar testified extensively and explained that respondent Ivory had strained or sprained her back and went through the extensive medical records he reviewed. In his opinion, she was not permanently substantially incapacitated from her duties as a Program Technician. Dr. Adeyemo also testified that Ms. Ivory reported a history of depression and anxiety related to the pain from her injury. Dr. Adeyemo also found that she did not meet the requirements for disability retirement.

¹ The Department of Corrections did not appear at the hearing.

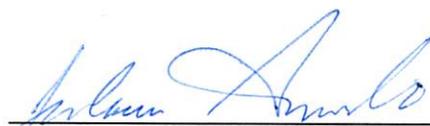
Respondent Ivory testified about her condition. She was allowed time to submit additional medical reports after the hearing and she submitted nothing further.

The ALJ explained respondent Ivory failed to meet her burden in that respondent Ivory presented no evidence to support her position and insufficient evidence to rebut the opinions of Drs. Nijjar and Adeyemo. The ALJ held that "cause exists to deny Ivory's application for 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.

February 20, 2014



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