

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Brent T. McLean (respondent McLean) was employed as an Assistant Chief Building Official at Yuba County. By virtue of his employment, respondent McLean is a local miscellaneous member of CalPERS subject to Government Code section 21150.

Respondent McLean claims a psychiatric condition and cardiovascular problems following a heart attack in 2007. Respondent McLean did not service-retire. He went back to work for another CalPERS entity, the City of Grass Valley, beginning on December 12, 2011.

CalPERS arranged for respondent McLean to be examined by Independent Medical Examiners, Dr. Denis Clegg, a board-certified Psychiatrist and Dr. Mark Eaton an Internist with experience in cardiology. Both Dr. Clegg and Dr. Eaton found that he was not substantially incapacitated from the usual and customary duties of an Assistant Chief Building Official.

After reviewing Dr. Eaton and Dr. Clegg's reports and other medical evidence, CalPERS staff denied respondent McLean's application for disability retirement. Respondent McLean appealed the decision and a hearing was held on November 5, 2013.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), respondent McLean has the burden of showing that he is substantially incapacitated from performing the usual duties in his position as an Assistant Chief Building Official. 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 McLean and Respondent County of Yuba did not appear at the hearing. Prior to the hearing, exhibits were sent to Mr. McLean. CalPERS staff spoke to Respondent McLean on a number of occasions including discussions regarding setting the hearing and sent a number of letters. The Administrative Law Judge (ALJ) found that the parties were properly served with notice of the hearing.

Dr. Eaton testified at hearing and explained that respondent McLean told him he was having intermittent chest pain, he had not had repeat coronary angiography and the stress testing was normal. During the examination, his vital signs were stable and the cardiac examination was normal. In his opinion, respondent McLean was not permanently substantially incapacitated from his duties as an Assistant Chief Building Official.

Dr. Clegg also testified at hearing about his examination and explained that respondent McLean was not permanently substantially incapacitated from his duties as an Assistant Chief Building Official.

The ALJ explained respondent McLean failed to meet his burden in that respondent McLean did not show up to the hearing and present any evidence.

The ALJ concluded that respondent McLean'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 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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