

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Michele DeGuzman (Respondent) applied for disability retirement based on orthopedic conditions (neck and back). By virtue of her employment as an Associate Governmental Program Analyst (AGPA) for Respondent Department of Health Care Services (Respondent DHCS), she was a local miscellaneous member of CalPERS. CalPERS determined that Respondent was not disabled, to which she appealed. Hearing was completed on December 10, 2013. Respondent was represented by counsel at hearing.

Respondent was on her way to a dental appointment when her car was hit from the rear after she came to a stop at an intersection. Right after the accident, she got out of the car and was able to walk. She was able to drive home. She went to Kaiser the next day, because of headache and back pain.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Joseph Serra. Dr. Serra interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her accident, past and present complaints, and reviewed voluminous medical records provided by Kaiser Permanente, dating from one day after her accident right up until July 2012. He also performed a comprehensive IME examination, primarily of Respondent's back.

Dr. Serra examined Respondent's cervical spine, neurologic systems, lower back, lumbosacral spine and lower extremities. The only thing Dr. Serra found was some tenderness to palpation over Respondent's lumbar spine. He also observed a guarded gait, but no limp. Dr. Serra does not believe that either of those findings rise to the level of substantial incapacity to perform her duties as an AGPA, which is a sedentary, desk work and computer office job.

Following his examination and review of documentation, Dr. Serra opined that in his medical opinion, Respondent is not substantially incapacitated from performance of her usual job duties. He believes that there are no job duties Respondent is unable to perform because of her physical condition.

At hearing, Dr. Serra testified to his examination and reports. Dr. Serra's medical opinion is that Respondent is not substantially disabled, even if she is experiencing some tenderness along her lumbar spine.

Dr. Serra noted several places in Respondent's medical records which indicated that Respondent did not comply with her recommended home exercise program. Dr. Serra testified that home exercise can be quite effective in dealing with spinal tenderness and pain. He also testified that failure to comply with the exercise program can result in longer or less than full recovery times.

Respondent testified on her own behalf, and also called her husband to the stand as a

witness. She did not call any physicians or other medical professionals to testify.

The Administrative Law Judge (ALJ) found that Respondent bears the burden to show by a preponderance of evidence (based on competent medical evidence) that her symptomology renders her unable to perform her usual job duties. The ALJ found that Respondent failed to carry her burden of proof. The ALJ found that she did not establish by competent, objective medical opinion, that, at the time of application, she was permanently disabled or incapacitated from performing her usual duties of an AGPA for Respondent DHCS. The ALJ found that Respondent provided no objective, competent medical evidence to support her claim of disability.

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.

February 20, 2014


ELIZABETH YELLAND
Senior Staff Attorney