

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Marcia Bundy (respondent Bundy) was employed as a Registered Nurse at Department of Corrections and Rehabilitation (CDCR) assigned to Central California Women's Facility. By virtue of her employment, respondent Bundy is a state safety member of CalPERS subject to Government Code section 21151.

Respondent Bundy claims she is disabled due to contracting tuberculosis at work and she claims to suffer from post-traumatic stress disorder. In her application for service pending industrial disability retirement, respondent Bundy's descriptions of her work limitations are vague and appear to be copied from preclusions in her workers' compensation case. Respondent Bundy service-retired and has been receiving service retirement benefits.

CalPERS arranged for respondent Bundy to be examined by an Independent Medical Examiner, Dr. Kenneth Gottlieb, a Board-Certified Psychiatrist and Dr. Ruston Damiana a Board-Certified Pulmonologist. Both Drs. Gottlieb and Damiana found that respondent Bundy was not substantially incapacitated from the usual and customary duties of a Registered Nurse.

After reviewing Drs. Gottlieb and Damiana's reports and other medical evidence, staff denied respondent Bundy's application for industrial disability retirement. Respondent Bundy appealed the decision and a hearing was held on January 7, 2014.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), respondent Bundy has the burden of showing that she is substantially incapacitated from performing the usual and customary duties in her position as a Registered Nurse. 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.)

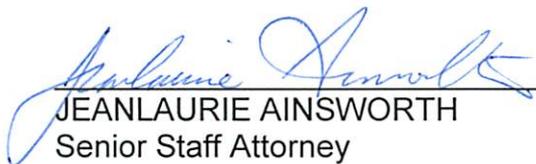
Respondent Bundy was represented by counsel at the hearing. Prior to the hearing, the parties exchanged discovery and agreed to the admission of medical evidence. At the hearing, Dr. Damiana testified that respondent Bundy has suffered from tuberculosis; it was successfully treated, and she suffered no permanent effects from the tuberculosis. Dr. Sobol, who was an Agreed Medical Examiner (AME) in respondent Bundy's workers' compensation case, supported this finding in his medical reports.

With respect to the claim of a psychological disability, reports from CalPERS IME Dr. Gottlieb, as well as from Dr. Larson, an AME for respondent Bundy's workers' compensation claim, were considered. Both doctors' reports supported a finding that respondent Bundy had a short period of total disability which was not permanent and not related to an on-the-job injury. Dr. Gottlieb found that respondent Bundy was not substantially incapacitated from the usual and customary duties of her position as a Registered Nurse.

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

April 16, 2014


JEANLAURIE AINSWORTH
Senior Staff Attorney