

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Paulette D. Manning (Respondent) applied for disability retirement based on orthopedic conditions (right shoulder, bilateral elbows, hands, wrists and back). By virtue of her employment as a Case Records Analyst for Respondent California Institution for Men, California Department of Corrections and Rehabilitation (Respondent CDCR), she was a state industrial member of CalPERS. CalPERS determined that Respondent was not disabled, and Respondent timely appealed. A hearing was completed on February 6, 2014. Respondent represented herself at the hearing.

Prior to hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process handbook. CalPERS answered Respondent's questions, and provided her with information on how to obtain further information on the process.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Alice Martinson. Dr. Martinson interviewed Respondent, reviewed her work history, job history and job descriptions, past and present complaints, and reviewed medical records. Dr. Martinson also performed a comprehensive IME examination, primarily of Respondent's shoulders, elbows, wrists and hands.

Dr. Martinson concluded that Respondent's symptoms did not preclude her from working as a Case Records Analyst. Dr. Martinson believes that Respondent's pain complaints were out of proportion to the medical evidence.

Dr. Martinson emphasized that no objective anatomic abnormalities, or anatomic problems, would prevent Respondent from doing her job. Dr. Martinson observed that Respondent flinched and cried out in pain when lightly touched on her back. However, when Dr. Martinson distracted Respondent, the doctor was able to exert substantial manual stress and pressure on her joints without a pain reaction. Dr. Martinson found no abnormalities in Respondent's lumbar and cervical spine on MRI studies and imaging. All other tests and results were negative.

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

At hearing, Dr. Martinson testified to her examination and reports. Dr. Martinson's medical opinion is that Respondent is not substantially incapacitated.

Respondent testified on her own behalf, and also called two friends to testify on her behalf. 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 as Case Records Analyst for Respondent CDCR. 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.

May 21, 2014


ELIZABETH YELLAND
Senior Staff Attorney