

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Linda Watson (Respondent) was employed as a Delivery Driver/Warehouse Worker by the San Bernardino City Unified School District (District). The District was a local contracting agency with CalPERS. By virtue of her employment, Respondent was a local miscellaneous member of CalPERS. Respondent submitted an application for disability retirement on the basis of a claimed condition of migraine headaches. CalPERS staff reviewed a written description of Respondent's usual and customary duties as a Delivery Driver/Warehouse Worker for the District. CalPERS staff reviewed copies of applicable medical records regarding Respondent and her condition of migraine headaches.

An Independent Medical Examination (IME) of Respondent was performed by Mumtaz A. Ali, M.D., a Board-certified Neurologist. Dr. Ali reviewed medical reports, reviewed a written description of Respondent's usual and customary job duties, and clinically examined Respondent. Dr. Ali prepared a written report which contained his observations, findings, conclusions, and ultimate opinion that Respondent was not substantially incapacitated from performing the usual and customary job duties of a Delivery Driver/Warehouse Worker for the District on the basis of migraine headaches. CalPERS denied Respondent's application for disability retirement. Respondent appealed this determination and a hearing was held on September 12, 2012.

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 clarified how to obtain further information on the process.

Respondent did not attend day one of the hearing. Respondent called the Office of Administrative Hearings (OAH) the morning of the hearing and stated that she would not attend because she claimed that she was experiencing a migraine headache. The Administrative Law Judge (ALJ) assigned to hear the appeal called Respondent and during the telephone conversation Respondent stated that she wished to withdraw her appeal.

On the basis of Respondent's statement, counsel for CalPERS sent Respondent a letter, confirming her desire to withdraw her appeal. Respondent did not sign or return the letter. OAH instructed that the matter should be rescheduled for hearing. A hearing was held on October 8, 2013.

*In order to be eligible for disability retirement, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition that is the basis for the claimed disability must be permanent or of an extended and uncertain duration.*

The ALJ received a copy of a written job description for the position of Delivery Driver/Warehouse Worker for the District. Additionally, at day 2 of the hearing Respondent testified, describing her usual and customary duties.

Unknown to CalPERS, after Dr. Ali had initially served in the capacity of an IME, he then became Respondent's treating physician. This change in status, with the potential for a conflict of interest to exist, required Respondent to be examined by another physician.

Robert Moore, M.D., also a Board-certified Neurologist, reviewed a written job description, reviewed relevant medical reports (including the reports of Dr. Ali) and performed his own clinical examination of Respondent. Dr. Moore prepared a written report which contained his observations, findings, conclusions, and opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of a Delivery Driver/Warehouse Worker for the District.

At day two of the hearing, the ALJ received into evidence copies of the written reports of Dr. Ali and Dr. Moore. Dr. Ali concluded that Respondent was able to perform the "essential functions of her job." Dr. Ali's neurological examination of Respondent was normal. Dr. Moore's neurological examination of Respondent was normal.

Respondent offered copies of various medical reports into evidence, including reports from physicians who had evaluated her in a companion claim/case for Workers' Compensation benefits.

After considering all of the documentary evidence and testimony, the ALJ found as follows:

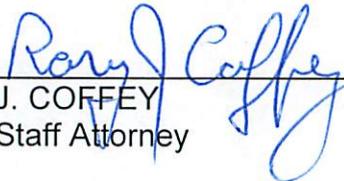
"The facts of this case are not in dispute. Respondent Watson's statements/testimony is consistent with the complaints that she made to several physicians who evaluated her. She has experienced migraine headaches for more than 15 years....When she does not have the headaches, she is able to return to work, perform her duties, and meet the physical requirements of her employment. There is no neurological or other medical evidence that she is unable to perform the duties and/or physical requirements of the position when she does not have the migraine headaches."

The ALJ found that Respondent did not provide sufficient competent medical evidence to demonstrate that she was substantially incapacitated from performing the usual and customary duties of the Delivery Driver/Warehouse Worker for the District.

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.

June 18, 2014

  
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RORY J. COFFEY  
Senior Staff Attorney