

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

Appeals before the Board are conducted pursuant to the provisions of the Administrative Procedure Act (APA), Government Code, section 11370, et.seq. Section 11521 (Reconsideration) provides, in relevant part, as follows:

"The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge." (Emphasis added.)

The hearing in this matter occurred on January 27, 2014. The Proposed Decision, denying Respondent Sonia G. Acosta's (Respondent) appeal, was issued on February 25, 2014. The Board voted to adopt the Proposed Decision on April 16, 2014. Respondent submitted a Petition for Reconsideration on May 22, 2014.

Respondent Sonia Acosta seeks reconsideration by the Board on the basis of two (2) alleged grounds; 1) that the CalPERS Independent Medical Examiner (IME) asked her inappropriate questions, and 2) that she had inadequate notice of the January 27, 2014 hearing. Both grounds lack any evidentiary support.

With respect to Respondent's first alleged ground for granting reconsideration (that the IME asked inappropriate questions), the Board need only refer to the Administrative Law Judge's (ALJ) thorough description of the written report and testimony of Perry Maloff, M.D. In the Decision, at Factual Findings No 13, the ALJ noted how Respondent was reluctant to provide responses to the IME's questions, making it very difficult for Dr. Maloff to obtain necessary, reliable information upon which to make an assessment of Respondent's claims. Respondent may not have liked Dr. Maloff's questions or had a purposeful desire to withhold information, but that did not and does not make the questions, themselves, inappropriate.

With respect to Respondent's second alleged ground for granting reconsideration (inadequate notice of the hearing), the Board is reminded of the ALJ's observations of Respondent at the hearing and the ALJ's conclusion that Respondent was not a believable witness.

- "Moreover, the evidence introduced cast great doubt on Ms. Acosta's veracity. ...The evidence portrayed an individual who has been less than candid."
(Factual Finding No. 12)
- "The records raised significant doubts regarding Ms. Acosta's veracity."
(Factual Finding No. 13)

Respondent provides no evidence in support of her claim that she received only three (3) days notice regarding the hearing.

Against Respondent's naked claim is the fact that Respondent did not, at the time of the hearing, request that the ALJ continue the hearing because of a claimed lack of notice. Had Respondent made such a request, the ALJ would have noted the request and included her decision (i.e., grant or deny) in the Proposed Decision.

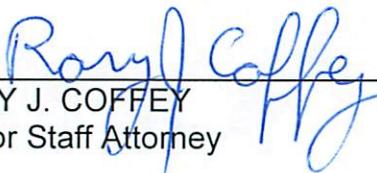
Further, while the ALJ did not comment specifically on the subject of what notice Respondent received regarding the hearing (arguably and inferentially because it was not an issue) in the Proposed Decision, the ALJ did note that the Statement of Issues "and other jurisdictional documents" were served on Respondent. The January 2013 CalPERS letter advising Respondent that her application had been denied was obviously received by Respondent, as she appealed that determination. The November 2013 notice regarding the January 2014 hearing was mailed, by certified mail, to Respondent using the same address as previously used. Respondent did not pick up the envelope containing the notice. The returned envelope did not indicate a change of address for Respondent, only that the envelope was unclaimed. Respondent did not contact the Legal Office at any time between January 2013 and January 2014 to advise or inform of a change of address. Legal Office staff conducted an investigation and obtained an alternate address for Respondent and, using that alternate address, again mailed notice of the January 27, 2014, hearing to Respondent on January 9, 2014. Respondent obviously received that notice, as she appeared at the hearing.

Respondent's own failure to keep the Legal Office apprised of her current address and her failure to request that the hearing be continued, if she had truly felt that she had received inadequate notice, undercut her request for reconsideration. Especially when the alleged inadequate notice is prefaced by Respondent's assertion that, "I did not have any paperwork ready to be presented at my hearing" (Emphasis added.) Contradicting this assertion, the ALJ noted that "Ms. Acosta provided numerous medical records from her treating physicians. The records included internal medicine evaluations, psychological records, and workers' compensation physician evaluations." (See Factual Finding No. 10.)

Respondent has failed to demonstrate any basis for granting her request for reconsideration of the Decision.

Respondent may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

June 18, 2014



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