

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

Respondent Raquel Nadal-Rodriguez (Respondent) applied for disability retirement on the basis of an orthopedic condition ("lower back problems"). By virtue of her employment as a Physical Education Attendant with the Oakland Unified School District (Respondent OUSD), she was a state miscellaneous member of CalPERS. A hearing was completed on December 9, 2013.

Prior to hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided her with a copy of the administrative hearing process handbook. CalPERS answered her questions, and provided her with resources to obtain further information. While CalPERS did object to some of the documents Respondent introduced at hearing, all Respondent's exhibits were admitted into evidence and considered by the Administrative Law Judge (ALJ). Respondent also provided testimony on her own behalf.

As part of CalPERS review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to William R. Sterns, M.D., a board-certified Orthopedic Surgeon. Dr. Sterns interviewed Respondent, and obtained Respondent's summary of her medical history, treatment, work history, recreational activities, and present complaints. Dr. Sterns also reviewed Respondent's prior medical records, took an oral history from Respondent, and performed a comprehensive physical examination.

Upon examination, Dr. Sterns found no objective evidence of nerve compression but did find evidence of symptom embellishment, in that some of Respondent's complaints or responses to examination had no physiologic basis. Dr. Sterns concluded that Respondent was temporarily disabled from performing her usual duties, and would remain so for the next three months.

Approximately five months after performing the examination and issuing the report, Dr. Sterns reviewed medical records provided by Respondent that postdated his IME examination. While Dr. Sterns changed his opinion that Respondent's ankle pain was referred from her back, he nevertheless concluded in a Supplemental IME report that he found no reason to consider Respondent incapacitated from her regular work due to her left ankle or lower back injuries. Dr. Sterns concluded that Respondent was temporarily disabled from October 13, 2010, through January 13, 2011, but was not permanently incapacitated from performing her usual duties.

Respondent did not offer any medical testimony at hearing. Rather, she introduced reports from Dr. Camenson and Dr. Noralahi. The ALJ found that the opinions of Dr. Camenson and Dr. Noralahi were not as persuasive as the opinion of Dr. Sterns and found that Respondent failed to meet her burden of proof and establish that her disability is permanent or of an extended and uncertain duration.

The ALJ concluded that Respondent's appeal should be denied. On April 16, 2014, the Board adopted the Proposed Decision denying Respondent's appeal. Respondent sent a letter to the CalPERS Board Unit and Legal Office dated May 16, 2014, requesting that the Board's decision to adopt the Proposed Decision be stayed so that she may file a Petition for Reconsideration. A stay was granted on May 21, 2014. The deadline for Respondent to submit written argument and evidence in support of her Petition was June 6, 2014. CalPERS Board Unit received Respondent's written argument along with supporting documents on June 10, 2014.

The relevant evidence submitted by Respondent consists of a doctor's note, a physicians' assistant note, and two pages of a four page questionnaire titled Medical Opinion of Physical Abilities. Each of these documents will be addressed in turn.

Dr. Deepika Jannapureddy, from Tiburcio Vasquez Health Center, Inc., signed a note dated July 26, 2013, and indicates Respondent has been diagnosed with uncontrolled diabetes, severe vision problems and back pain. The note also indicates that Respondent "is currently unable to work and will continue to follow up care here at the clinic". The note fails to address how Respondent's diagnoses impair her ability to work or otherwise disable her. The note lacks any objective evidence to establish a disability and there are no records substantiating continued treatment at "the clinic". Without any objective evidence to demonstrate how a particular condition is disabling and any evidence of subsequent treatment, Dr. Jannapureddy's note does not establish Respondent's claim for disability retirement.

Amy Smith, Physician's Assistant, at Alameda County Medical Center, signed a note dated July 24, 2013, and indicates Respondent suffers from degenerative disc disease of the lumbar spine and chronic pain of the lower back. The note also indicates that Respondent "is currently unable to work and is disabled by this injury" and that "[s]he is working with the Pain Management and Functional Restoration Clinic in the hopes of increasing her functionality and returning to work." The note again lacks any objective evidence to establish a disability and there are no records substantiating continued treatment. Without any evidence of subsequent treatment, the note does not establish Respondent's claim for disability retirement. In addition, IME Sterns testified competently at the hearing that he found no objective evidence of nerve compression but did find evidence of symptom embellishment. The lack of any objective evidence in these two notes highlights Dr. Sterns' concerns of symptom embellishment.

A questionnaire titled Medical Opinion of Physical Abilities was also submitted by Respondent. The four page questionnaire is missing pages two and four, is undated and unsigned. There is no indication who the author is or what their qualifications are. It appears that a physical exam was completed, but the vast majority of the information contained in the document relates to subjective complaints made by Respondent. The questionnaire does indicate that a MRI of the lumbar spine was completed on February 12, 2012, but that it showed only "mild degenerative changes". This document is wholly inconclusive for a variety of reasons and would have likely been inadmissible at hearing. The lack of a known author and the author's qualifications, in and of itself, raises serious

issues of trustworthiness. Additionally, the missing pages and lack of date make this document unusable for purposes of determining whether Respondent is substantially incapacitated from performing her usual duties.

Finally, in considering the content of Respondent's Petition, there are no new claims raised that were not addressed at hearing, and Respondent again fails to substantiate her claims with competent and persuasive evidence.

For all of the reasons stated above, staff argues the Board deny the Petition for Reconsideration and uphold its decision.

Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. Respondent may file a writ petition in superior court seeking to overturn the decision of the Board.

June 18, 2014



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