ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

The hearing on this case was completed February 6, 2014. Following the hearing, a Proposed Decision was issued on March 4, 2014. The Proposed Decision was in favor of CalPERS (denial of Respondent's application for disability retirement). The Board voted to adopt the Proposed Decision on May 21, 2014. Paulette Manning (Respondent) submitted this Petition for Reconsideration on May 30, 2014.

Respondent was employed by the Department of Corrections and Rehabilitation (Respondent Corrections) as a Case Records Analyst. She filed for disability retirement based on right sided orthopedic conditions. CalPERS denied her application. She appealed, and a hearing was completed.

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, reviewed medical records and performed a comprehensive IME examination, primarily of Respondent's shoulders, elbows, wrists, back 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 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.

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.

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. Respondent 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.

CalPERS staff addresses Respondent's arguments below:

With respect to Respondent's disagreement with the ALJ's findings of fact and legal analysis, it is clear from the Proposed Decision that evidence was taken, and numerous exhibits were submitted on the issue of Respondent's claimed disability. The ALJ simply found against Respondent. Respondent has not raised any new evidence or change in circumstances which would warrant reconsideration.

Respondent disagrees with the ALJ's interpretations of the medical evidence, and requests review of extracts from one additional medical record, Dr. Brourman's report dated June 7, 2011. First of all, Respondent attempts to augment the record using only selected pages from a multipage report. Second, Respondent presented voluminous medical records at hearing, all of which were admitted subject to objection. Respondent did not attempt to introduce Dr. Brourman's June 7, 2011, report at hearing. However, Dr. Martinson did review Dr. Brourman's report and it is summarized in her IME report. The record was closed at the end of the hearing. It is improper for Respondent to attempt to introduce additional evidence after the record is closed. Moreover, even if the additional evidence were allowed, Dr. Martinson has already reviewed the report and opined that Respondent is not substantially incapacitated from the performance of her duties. Respondent has presented nothing to change the only competent medical opinion in this case: that Respondent is not substantially incapacitated from performance of her usual job duties.

For all of the reasons stated above, staff argues the Board deny Respondent's 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

Elizabeth Yelland

ELIZABETH YELLAND
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