

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Sharon L. Franklin (Respondent) was employed by the Coalinga-Huron Unified School District (the District) as a Senior Administrative Clerk and was a miscellaneous member of CalPERS.

Respondent submitted an application for disability retirement on the basis of internal conditions (diabetes, headaches, and cirrhosis of the liver).

CalPERS reviewed written descriptions of Respondent's job duties and relevant medical reports submitted by Respondent, particularly reports prepared by Leonel Apodaca, Jr., M.D. CalPERS also sent Respondent for Independent Medical Examinations (IME) with Internist Samuel Rush, M.D. Based on relevant medical evidence, CalPERS determined Respondent was not substantially incapacitated from performance of her duties as a Senior Administrative Clerk at the time her application for disability retirement was filed.

Respondent appealed CalPERS' determination as to whether Respondent is substantially incapacitated from performing her usual and customary job duties.

To be eligible for disability retirement, competent medical evidence must demonstrate the member is substantially incapacitated from performing the usual and customary duties of her position. Usual and customary duties are defined as duties that are actually performed by the member. Furthermore, the injury and condition that is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to meet her burden of proof with witnesses and documents. CalPERS answered other relevant questions presented by Respondent. Upon Respondent's request, CalPERS also provided Respondent an estimate of her disability retirement warrant, in the event she is approved for disability retirement. Respondent requested this information to compare her disability retirement benefits to her service retirement benefits she is currently receiving. The estimate demonstrated Respondent's disability retirement warrants would be the same as her service retirement warrants.

The hearing was held on May 20, 2014. On the morning of the hearing, Respondent called CalPERS and left a message stating she will be unable to attend the hearing due to problems with her knee and will leave her retirement "as is."

Respondent, however, did not provide anything in writing withdrawing her appeal. Therefore, a hearing was held as scheduled. The matter was conducted as a default.

CalPERS submitted exhibits, including Dr. Rush's medical reports and a description of Respondent's usual and customary job duties.

Dr. Rush testified that he reviewed Respondent's job description and her medical records, obtained an oral history of her medical condition, and conducted a physical examination. Dr. Rush diagnosed Respondent with cryptogenic cirrhosis of the liver, however, found her mental status to be much less severe than she reported. Dr. Rush opined Respondent was not substantially incapacitated from performing her usual and customary job duties.

The Administrative Law Judge (ALJ) concluded that Respondent's appeal should be denied for failure of proof. 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 motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

August 20, 2014



PREET KAUR
Staff Attorney