

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Sophia Ibrahim (Respondent) was employed by the Department of Developmental Services at Fairview Developmental Center as a Teaching Assistant. By virtue of her employment, Respondent is a miscellaneous member of the California Public Employees' Retirement System (CalPERS) subject to Government Code section 21150.

Respondent claims a right hand carpal tunnel condition. In her application for disability retirement, Respondent claimed her limitations included no repetitive grasping with right hand, no forceful grasping with right hand, and no repetitive lifting over five pounds.

CalPERS arranged for Respondent to be examined by an Independent Medical Examiner, Dr. Khiem D. Dao, a Board-Certified Orthopedic Surgeon. Dr. Dao specializes in hand surgery. Dr. Dao found that Respondent was not substantially incapacitated from the usual and customary duties as a Teaching Assistant.

After reviewing Dr. Dao's report and other medical evidence, CalPERS staff denied Respondent's application for disability retirement. Respondent appealed the decision and a hearing was held on June 10, 2014.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), Respondent has the burden of showing that she is substantially incapacitated from performing the usual and customary duties in her position as a Teaching Assistant. Prophylactic restrictions and risk of possible future injury cannot support a finding of disability. (*Mansperger v. Pub. Employees' Ret. System* (1970) 7 Cal.App.3d 873; *Hosford v. Bd. Of Administration* (1978) 77 Cal.App.3d 854.)

Respondent represented herself with the assistance of her husband. Prior to the hearing, CalPERS sent all exhibits to Respondent and explained the procedure. CalPERS staff worked with Respondent and she produced some medical records at the hearing, which were admitted.

Dr. Dao testified extensively and explained that Respondent had some minor stiffness and pain due to a lack of physical therapy. He reviewed reports by Dr. Casey, submitted by Respondent at hearing, which confirmed his opinion; the limitations were not enough to render her permanently substantially incapacitated from her duties as a Teaching Assistant, which is not a very physical job.

Respondent testified about her condition. She was allowed to submit additional medical evidence during the hearing.

In finding in favor of CalPERS, the Administrative Law Judge (ALJ) explained Respondent failed to meet her burden of proof because the persuasive medical evidence established that Respondent was not substantially incapacitated from her usual duties as a Teaching Assistant.

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.

August 20, 2014

for 

JEANLAURIE AINSWORTH
Senior Staff Attorney