

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Ms. Karen Hodges (Respondent Hodges) was employed by the Employment Development Department as a Personnel Specialist. By virtue of her employment, Respondent Hodges is a miscellaneous member of the California Public Employees' Retirement System (CalPERS) subject to Government Code section 21150.

The Employment Development Department (Respondent EDD) filed an application for disability retirement on Respondent Hodges' behalf. Respondent Hodges claims injury to her left shoulder, neck and head. In the application for disability retirement, Ms. Hodges claimed to be temporarily totally disabled.

CalPERS arranged for Respondent Hodges to be examined by two Independent Medical Examiners; Dr. Amir Jamali, a Board-Certified Orthopedic Surgeon and Dr. Steven McIntire, a Board-Certified Neurologist. Both physicians found that Ms. Hodges was not substantially incapacitated from the usual and customary duties as a Personnel Specialist.

After reviewing Dr. Jamali's report, Dr. McIntire's report and other medical evidence, CaPERS staff denied Ms. Hodges' application for disability retirement. Ms. Hodges appealed the decision and a hearing was held on June 13, 2014.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), Ms. Hodges has the burden of showing that she is substantially incapacitated from performing the usual and customary duties in her position as a Personnel Specialist. Prophylactic restrictions and risk of possible future injury cannot support a finding of disability. (*Mansperger v. Pub. Employees' Ret. System* (1970) 6 Cal.App.3d 873; *Hosford v. Bd. of Administration* (1978) 77 Cal.App.3d 854.)

Respondent EDD was represented by counsel and Ms. Hodges represented herself with the assistance of her sister. Prior to the hearing, CalPERS sent all exhibits to respondents. CalPERS staff worked with Ms. Hodges and EDD on procedural issues. They produced medical records at the hearing which were admitted.

Dr. Jamali testified extensively and explained that Ms. Hodges had full range of motion in her shoulder. She had a more limited range of motion in her neck. Dr. Jamali opined she had a muscle strain and mild degenerative disc disease. He found she could perform the very limited physical demands of her position.

Dr. McIntire testified extensively and explained that her headaches were rebound headaches from improper use of medication. Dr. McIntire explained he found no neurological deficits during his examination or reported in the medical records.

At the hearing Respondent EDD submitted workers' compensation records. Neither Respondent Hodges nor Respondent EDD called an expert medical witness to testify.

In finding in favor of CalPERS, the Administrative Law Judge (ALJ) explained Ms. Hodges failed to meet her burden of proof and the persuasive medical evidence established that Ms. Hodges was not substantially incapacitated from her usual and customary duties as a Personnel Specialist.

The ALJ explained that findings issued for the purposes of workers' compensation are not evidence that respondent's injuries are substantially incapacitating for the purposes of disability retirement and that "respondent did not present competent objective medical evidence to establish she was permanently disabled or incapacitated from performance of her duties as a Personnel Specialist."

The ALJ concluded that Respondent Hodges' 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 or EDD may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

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