

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Karen Culverson (Respondent) is a safety member of CalPERS previously employed by Calipatria State Prison, California Department of Corrections and Rehabilitation (CDCR). Respondent Culverson was approved for a CalPERS industrial disability retirement on April 21, 2001, for orthopedic conditions of her left knee and lower back. She has remained on industrial disability retirement since that time.

Subsequently, Respondent was notified that under Government Code section 21192 CalPERS was reviewing her disability retirement status. Pursuant to Government Code section 21192 a member who disability retires at an age less than 50 can be required to undergo subsequent medical examination to determine if he or she remains incapacitated from the usual and customary duties of his or her position. Respondent was 31 when she was granted industrial disability retirement in 2001. The injury or condition that is the basis for the disability retirement must be permanent or of an extended and uncertain duration.

CalPERS staff arranged a new medical examination, then reviewed that and all relevant medical reports. Dr. Mohinder Nijjar, an Orthopedic Surgeon, examined Respondent and determined that Respondent was capable of performing her duties at CDCR, as she was no longer substantially incapacitated from performing her usual and customary job.

Respondent appealed that determination and a hearing was held on June 17, 2014.

CalPERS followed the process to return the Respondent to the workforce. Prior to hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process handbook. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing, the Administrative Law Judge (ALJ) heard evidence from three witnesses. CalPERS presented two witnesses, an investigator and a medical doctor. Respondent testified on her own behalf.

Dr. Nijjar testified that there were no objective findings that would support the claim of incapacity made by the Respondent. Dr. Nijjar testified that the findings upon examination indicated that the Respondent was not incapable of performing her job duties. The investigator presented DVD footage of the Respondent working to assist in laying part of a foundation for an area of a church.

Respondent testified that she experienced substantial discomfort, especially this year. She testified that she had discussed this with her doctor who said she should remain off work.

The ALJ found that the doctor's findings were not sufficient to sustain the accusation. The ALJ determined that the doctor's findings were too conclusory and did not present sufficient showing of Respondent's ability to perform her job duties. In the same manner, the investigator's testimony and recordings of Respondent's activities failed to convince the ALJ that a prima facie case was presented. The ALJ found that the testimony of the Respondent concerning her pain was convincing, if unnecessary, because a prima facie case had not been established. The ALJ concluded that Respondent's appeal should be granted.

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.

September 17, 2014



CYNTHIA A. RODRIGUEZ
Senior Staff Attorney