

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Keith Holmes (Respondent) applied for disability retirement based on Chronic Obstructive Pulmonary Disease (COPD). By virtue of his employment as an Office Specialist, Senior for Respondent Butte County (Respondent County), Respondent was a state miscellaneous member of CalPERS. CalPERS determined that Respondent was not disabled, and Respondent appealed. A hearing on Respondent's appeal was completed on August 12, 2014. Respondent did not appear at the hearing and did not submit evidence.

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

As part of CalPERS' review of Respondent's medical condition, Respondent was sent for an Independent Medical Examination (IME) to Dr. Sydney Choslovsky, who is board-certified in Internal Medicine and Pulmonary Disease. Dr. Choslovsky interviewed Respondent, reviewed his work history, job history, job descriptions, past and present complaints, and medical records. Dr. Choslovsky also performed a comprehensive IME examination, focusing on Respondent's breathing difficulties.

Dr. Choslovsky diagnosed Respondent as having COPD related to smoking. Dr. Choslovsky opined that there are no specific job duties that Respondent is unable to perform because of a physical or mental condition. Although Respondent does have COPD, he can continue with his job duties, because his job is sedentary and clerical.

Following examination, Dr. Choslovsky opined that, in his medical opinion, Respondent is not substantially incapacitated from performance of his usual job duties.

The Administrative Law Judge (ALJ) found that Respondent bears the burden to present competent medical evidence to establish that he is permanently and substantially incapacitated for the performance of his usual job duties. Respondent did not appear at hearing, and did not submit any evidence to meet his burden.

The ALJ concluded that Respondent's appeal must 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 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.

October 15, 2014


ELIZABETH YELLAND
Senior Staff Attorney