

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Rosemary Kroll (Respondent) applied for disability retirement on the basis of an orthopedic (thoracic and lumbar spine) condition. By virtue of her employment as a Courier with the Solano Community College District, Respondent was a state miscellaneous member of CalPERS. A hearing was completed on August 20, 2014.

Prior to the 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.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to Andrew Brooks, M.D., a board-certified Orthopedic Surgeon. Dr. Brooks interviewed Respondent, and obtained Respondent's summary of her medical history, treatment, work history and present complaints. Dr. Brooks also reviewed Respondent's medical records, took an oral history, and performed a comprehensive physical examination.

Dr. Brooks prepared a report that indicated he found no deformities or specific neurologic abnormalities and that her condition is not the type that usually becomes permanent; and, with proper treatment, should gradually resolve. Dr. Brooks was unable to identify any specific job duty that Respondent is unable to perform because of a physical or mental condition and that Respondent is not incapacitated for the performance of her usual duties.

After authoring the initial report, CalPERS sent Dr. Brooks additional medical records not previously reviewed. In a supplemental IME report, Dr. Brooks stated that the additional information did not change his opinion.

At the hearing, Dr. Brooks testified about his reports, the examination he performed, and his expert opinion regarding Respondent's capacity for the performance of her normal duties.

Respondent did not offer any medical testimony at the hearing. Rather, she testified on her own behalf and introduced reports relating to a pending Workers' Compensation claim that were admitted into evidence as administrative hearsay.

The ALJ concluded that Respondent failed to establish that she was substantially incapacitated from performing her usual job duties, and therefore, was not entitled to disability retirement.

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.

November 19, 2014



CHRISTOPHER PHILLIPS
Staff Attorney