

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Teresita H. Ilagan (Respondent) applied for disability retirement on the basis of an orthopedic (left shoulder) condition. By virtue of her employment as a Food Service Technician I with the Sonoma Developmental Center, she was a state miscellaneous member of CalPERS. A hearing was completed on September 4, 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 Thomas F. Moyad, M.D., M.P.H., a board-certified Orthopedic Surgeon. Dr. Moyad interviewed Respondent, and obtained Respondent's summary of her medical history, treatment, work history and present complaints. Dr. Moyad also reviewed Respondent's medical records, took an oral history, and performed a comprehensive physical examination.

Dr. Moyad prepared a report that indicated Respondent could not perform frequent, repetitive overhead motion or frequent heavy lifting of more than 25 pounds, but she was not substantially incapacitated from performing her usual and customary job duties.

CalPERS requested that Dr. Moyad provide clarification regarding whether Respondent was substantially incapacitated from performing her job duties given his finding that she could not perform frequent repetitive overhead motion. Dr. Moyad authored a supplemental IME report in which he explained that despite Respondent's duty statement that indicated three to six hours per day were spent reaching overhead and that lifting up to 50 pounds was required, he reached his conclusion that she was not incapacitated based on his discussions with Respondent during the examination when he was told that her actual duties required less time and less strength than indicated in the duty statement.

At the hearing, Dr. Moyad 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 and her husband testified about her physical limitations and Respondent offered documents relating to a Workers' Compensation claim and Social Security into evidence. The documents were admitted 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