

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Kimberly Haynes (Respondent) was approved for Industrial Disability Retirement on June 19, 2000, based on orthopedic conditions (neck, back, bilateral hips). CalPERS subsequently determined that Respondent was no longer disabled from the performance of her duties as a Medical Technical Assistant (MTA) with Respondent California Department of Corrections and Rehabilitation, Los Angeles County, and that she should be reinstated. Respondent appealed. The hearing was completed on September 22, 2014.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Daniel D'Amico. Dr. D'Amico interviewed Respondent, obtained a medical history from her, reviewed her medical records, watched a surveillance video, and obtained a history of her past and present complaints. He also performed a comprehensive IME examination.

Dr. D'Amico examined Respondent's back, hips, and upper and lower extremities. The only thing that Dr. D'Amico diagnosed was age-appropriate degenerative cervical disc disease, and somatoform pain syndrome. Somatoform pain syndrome often comes from depression and anxiety. In Dr. D'Amico's medical opinion, Respondent thinks she is disabled because she has pain, but he did not believe her pain is disabling.

Following his examination and review of all documentation, Dr. D'Amico opined that Respondent was not substantially incapacitated from performance of her usual job duties. He believes that there are no job duties Respondent is unable to perform because of her physical condition.

At the hearing, Dr. D'Amico testified about his examination and reports. Dr. D'Amico's medical opinion was that Respondent is not substantially incapacitated.

Respondent testified on her own behalf. She also called her husband to testify. She did not call any physicians or other medical professionals to testify.

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 provided her with information on how to obtain further information on the process.

The Administrative Law Judge (ALJ) found that CalPERS bears the burden to show by a preponderance of the evidence (based on competent medical evidence) that Respondent was no longer substantially incapacitated and should be involuntarily reinstated to her former position (Gov. Code sections 21191 and 21192). The ALJ found Dr. D'Amico's opinion was persuasive and found that CalPERS met its burden of proof. The ALJ further found that Respondent provided no objective, competent medical evidence to support her claim of continued disability.

The ALJ concluded that Respondent failed to establish that she was substantially unable to perform her usual job duties, and therefore, was not entitled to continue on Industrial Disability Retirement.

The ALJ concluded that Respondent's appeal should be denied and that she should be reinstated to her former usual job duties as an MTA for the Department of Corrections. 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.

December 17, 2014


ELIZABETH YELLAND
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