

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Patricia A. Hunt (Respondent) was employed as a Licensing Program Analyst by the California Department of Social Services (DSS). By virtue of this employment, she was a miscellaneous member of CalPERS. Respondent applied for Disability Retirement on the basis of cumulative trauma to both upper extremities, head, neck, and spine. CalPERS staff determined that she was not substantially incapacitated from the performance of her duties and Respondent was notified of this determination. After that notification, Respondent filed numerous claims for additional medical bases for her disability, all of which were reviewed, and all of which were denied. Her appeal was accepted and set for hearing after the review of her additional claimed bases for disability.

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 pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

A hearing was held on May 19, 2014 and September 12, 2014, on the issue of medical capacity to perform Respondent's job duties. Respondent was granted continuances to allow her to be fully prepared for her hearings where she represented herself. The Administrative Law Judge (ALJ) was asked to decide whether or not there was competent medical and other evidence to establish Respondent's capacity to perform her duties as a Licensing Program Analyst at DSS.

On the first day of hearing, Respondent appeared and presented a large number of documents, including letters from physicians and the results of a sleep study. Only one of those exhibits contained a medical opinion, and it did not contain any explanation of work limitations. These exhibits were accepted into evidence as administrative hearsay. Respondent's duty statements from DSS were received into evidence, and her duties were discussed at length by medical practitioners at the hearing, along with the medical documents Respondent submitted.

Independent Medical Examiner (IME) Dr. Robert Henrichsen, a Board-Certified Orthopedic Surgeon, testified that he examined Respondent and wrote a report of Respondent's condition. Dr. Henrichsen's report was entered into evidence. This expert found that Respondent was not incapacitated from the regular duties of her job. Although she had some reduction of range of motion, her findings were within the range of "normal." He determined that she had no incapacity from her work duties, which were reviewed at length. Dr. Henrichsen's examination also informed him that Respondent is using her upper extremities equally and normally.

There was no other competent medical evidence. Respondent did not appear at the second day of hearing.

The ALJ issued a Proposed Decision on November 21, 2014, approving the decision of CalPERS' staff in denying Respondent's appeal of the CalPERS' determination. The ALJ determined that Respondent was not medically incapacitated from performing her job duties. The Proposed Decision found that Respondent failed to meet her burden of establishing that she is permanently and substantially incapacitated for the performance of her usual duties as a Licensing Program Analyst with DSS. The ALJ found that there was no competent medical evidence that Respondent could not perform the usual and customary duties.

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.

February 19, 2015



CYNTHIA A. RODRIGUEZ
Senior Staff Attorney