

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Barbara Land (Respondent) worked for the California Department of Corrections and Rehabilitation (CDCR), Sierra Conservation Center as an Office Technician. As a result of her employment, Respondent is a state industrial member of CalPERS. She filed an application for disability retirement claiming disability on the basis of orthopedic conditions related to her hips, right shoulder, carpal tunnel, hands, knees and spine. The application submitted by Respondent indicated it was impossible for her to perform her job duties due to her orthopedic conditions.

CalPERS staff reviewed medical reports regarding Respondent's orthopedic conditions and a written description of her usual and customary job duties. CalPERS retained Robert Henrichsen, M.D., a board-certified Orthopedic Surgeon, to conduct an Independent Medical Examination (IME). Dr. Henrichsen examined Respondent and reviewed medical records and a written job description. Based on his examination and records review, Dr. Henrichsen issued a report indicating that Respondent is not substantially incapacitated for the performance of her usual and customary duties. Dr. Henrichsen opined that Respondent's physical exam demonstrated a lot of subjective symptoms without evidence of serious abnormal findings. According to Dr. Henrichsen, the objective findings on exam do not support an inability to accomplish the occupational duties of an Office Technician. Further, Dr. Henrichsen indicated that Respondent exaggerated her symptoms. As a result, staff denied Respondent's application for disability retirement. In response, Respondent submitted a timely appeal of staff's determination and a hearing was held to determine whether Respondent was substantially incapacitated from performance of her duties as an Office Technician.

To be eligible for disability retirement, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the claimed basis for the disability must be permanent or of an extended and uncertain duration.

On September 19, 2014, CalPERS served by certified mail a Notice of Hearing, which provided the date, time, and place of the hearing to Respondent. A week prior to the hearing, counsel for CalPERS attempted to contact Respondent regarding the upcoming hearing, however the call was answered by an automated message indicating that the mailbox was full and could not accept messages. At the hearing, there was no appearance by Respondent, despite being served with the Notice of Hearing as documented by CalPERS' proof of service. Once CalPERS established that Respondent had proper notice of the hearing, the Administrative Law Judge (ALJ) granted CalPERS' request to proceed with the hearing as a default pursuant to Government Code section 11520.

At the hearing, Dr. Henrichsen testified about his findings based on his examination of Respondent, as detailed in his medical reports. Through his testimony, Dr. Henrichsen reiterated that Respondent does not meet the disability qualifications of substantial incapacity to perform her occupational duties.

Based on the testimony presented at the hearing, as well as the medical reports submitted into evidence, the ALJ found that Respondent did not demonstrate through competent medical evidence that she is permanently disabled or incapacitated from performing her duties as an Office Technician with CDCR, Sierra Conservation Center. The ALJ found that Dr. Henrichsen's reports and testimony were persuasive that Respondent's orthopedic conditions are not disabling. Consequently, the ALJ denied Respondent's application for disability retirement.

The Proposed Decision is supported by the law and the facts. Staff argues that the Board should 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.

February 19, 2015



RENEE SALAZAR
Senior Staff Attorney