STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Theresa Rushton Office (Respondent) was employed by the Department of Justice, Office of the Attorney General as an Office Technician. As a result of her employment, she was a state miscellaneous member of CalPERS, subject to Government Code section 21150. Respondent submitted an application for service pending disability retirement, wherein she stated that she was unable to work due to a cardiovascular (congestive heart failure) condition. CalPERS retained Raye L. Bellinger, M.D., an Internist, as its Independent Medical Examiner (IME) in this case. Dr. Bellinger reviewed Respondent's medical records, and prepared a report documenting his findings and conclusions. Dr. Bellinger concluded that Respondent was not substantially incapacitated from performing her usual and customary duties.

Accordingly, CalPERS denied Respondent's application for disability retirement. Respondent appealed and a hearing was conducted on January 21, 2015, by an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH).

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

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

Respondent testified at the hearing. She described the congestive heart failure that she experienced that resulted in her being hospitalized for four days. She stated that she has a "hard time breathing" with "shortness of breath." She described her job as overwhelming.

Respondent's husband also testified and he stated how sick Respondent was when she was hospitalized. He also confirmed that Respondent has difficulty breathing and must go to the bathroom often due to the fluid pills she is taking.

Respondent did not offer any medical reports into evidence. She did, however, submit letters from her primary care physician and the physician currently treating her for stress and anxiety. Although these letters confirmed that Respondent was under the care of these physicians, they did not otherwise opine about Respondent's medical condition. Additionally, Respondent did not call any physicians to testify at the hearing.

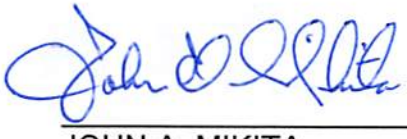
Dr. Bellinger described Respondent's job duties as "predominantly sedentary," and found that there were no job duties that Respondent was unable to perform. Although Respondent had "cardiac issues" including "hypertensive heart disease," Dr. Bellinger concluded that Respondent was capable of returning to her predominantly sedentary job. Dr. Bellinger explained that Respondent's heart condition is controllable if she continues to take her medications, maintains a healthy diet, exercises and loses weight. The ALJ found Dr. Bellinger's testimony and opinion persuasive.

The Proposed Decision notes that the person seeking a disability retirement bears the burden of establishing a right to that benefit. The ALJ concluded that Respondent did not carry her burden of proof. The ALJ noted that Respondent did not establish by competent, objective medical opinion that at the time of her disability application, she was permanently disabled or incapacitated from performing the usual duties of an Office Technician due to a cardiovascular condition.

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.

March 18, 2015



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