

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Yvette Estridge (Respondent Estridge) applied for service pending disability retirement on the basis of orthopedic (back and legs) conditions. By virtue of her employment as a Program Technician for Respondent State Compensation Insurance Fund (SCIF), Respondent Estridge was a state miscellaneous member of CalPERS.

Prior to the hearing, CalPERS explained the hearing process to Respondent Estridge 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.

As part of CalPERS' review of Respondent Estridge's medical condition, Respondent Estridge was sent for an Independent Medical Examination (IME) to Alan M. Gross, M.D., an Orthopedic Surgeon. Dr. Gross interviewed Respondent Estridge and obtained a summary of her medical history, treatment, work history and present complaints. Dr. Gross also reviewed Respondent Estridge's medical records, took an oral history and performed a comprehensive physical examination.

Following his examination and review of all documents, Dr. Gross opined that Respondent Estridge was not substantially incapacitated from performance of her usual job duties. Based on Dr. Gross' opinion, CalPERS staff denied Respondent Estridge's application for disability retirement. Respondent Estridge appealed this determination and a hearing was held on February 5, 2015.

Dr. Gross prepared a report and testified at the hearing. Dr. Gross described Respondent's reported complaints of numbness and pain in both legs as in a nondermatomal pattern, or one not consonant with the complained of back injury. His diagnoses were lumbosacral degenerative disc disease with multidermatomal, nonanatomic pain pattern and diabetes mellitus with neuropathy. The physical examination was deemed essentially normal.

With specific reference to the CalPERS criteria for disability, Dr. Gross concluded that Respondent Estridge was not incapacitated for the performance of her usual duties. In his opinion, the physical findings were essentially normal and there were no specific duties of the Program Technician position that Respondent Estridge could not perform.

Respondent Estridge did not offer any medical testimony at the hearing. Rather, she testified about her physical limitations and inability to drive one and one-half hours, from her home to work.

The Administrative Law Judge (ALJ) found that Dr. Gross presented credible medical evidence that established Respondent Estridge is not incapacitated from the

performance of her usual duties by reason of an orthopedic condition. The ALJ noted that while Respondent Estridge may not be able to drive for one and one-half hours, it is not a requirement of being a Program Technician at SCIF.

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.

April 15, 2015



CHRISTOPHER C. PHILLIPS
Senior Staff Attorney