

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Tanya Donley (Respondent Donley) was employed by the Los Angeles Unified School District as an Office Technician. By virtue of her employment, Respondent is a miscellaneous member of the California Public Employees' Retirement System (CalPERS) subject to Government Code section 21150.

Respondent Donley claims diabetic leg ulcers and hypertension. In her application for disability retirement, Respondent Donley claimed her limitations included walking.

CalPERS arranged for Respondent Donley to be examined by an Independent Medical Examiner, Dr. Soheila Benrazavi, an Internist. Dr. Benrazavi found that Respondent Donley had diminished sensations in her bilateral lower extremities (knees to feet) and upper extremities (hands up to wrists). She described this as moderate and explained that movement would help Respondent Donley's condition. Dr. Benrazavi found that Respondent Donley was not substantially incapacitated from the usual and customary duties of her position.

After reviewing Dr. Benrazavi's report and other medical evidence, CalPERS staff denied Respondent Donley's application for disability retirement. Respondent Donley appealed the decision and a hearing was held on May 4, 2015.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), Respondent Donley has the burden of showing that she is substantially incapacitated from performing the usual and customary duties in her position as an Office Technician. Prophylactic restrictions and risk of possible future injury cannot support a finding of disability. (*Mansperger v. Pub. Employees' Ret. System* (1970) 7 Cal.App.3d 873; *Hosford v. Bd. Of Administration* (1978) 77 Cal.App.3d 854.)

Prior to the hearing, CalPERS explained the hearing process to Respondent Donley and the need to support her case with witnesses and documents. CalPERS provided Respondent Donley with a copy of the Administrative Hearing Process Pamphlet. CalPERS answered Respondent Donley's questions and clarified how to obtain further information on the process.

Respondent Donley represented herself. Prior to the hearing, CalPERS sent all exhibits to Respondent Donley and explained the procedure. CalPERS staff worked with Respondent Donley and she produced some medical records at the hearing, which were admitted.

Dr. Benrazavi testified extensively and explained that Respondent Donley has diabetes which was poorly controlled and this was the cause of her symptoms. She found that her asthma was under control, as was Respondent Donley's hypertension. Dr. Benrazavi explained that Respondent Donley was not substantially incapacitated from her duties as an Office Technician.

Respondent Donley testified about her condition. She explained that her position required a lot of walking around the school site. Respondent Donley explained her condition had gotten worse since she stopped working.

In finding in favor of CalPERS, the Administrative Law Judge (ALJ) explained while Respondent Donley has a medical impairment, it was not to the level to incapacitate her, and pointed to the fact that her application references a wound on her leg as the reason she could not walk, and not anything else. The ALJ found that Respondent Donley failed to meet her burden of proof because the persuasive medical evidence established that Respondent Donley was not substantially incapacitated from her usual duties as an Office Technician.

The ALJ concluded that Respondent Donley'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.

August 19, 2015

  
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Senior Staff Attorney