

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Mary E. Gilbert (Respondent Gilbert) applied for disability retirement on April 24, 2013, on the basis of orthopedic (osteoarthritis) and psychological (Attention Deficit Hyperactivity Disorder (ADHD), anxiety, depression, possible bi-polar) conditions. Based on competent medical evidence, CalPERS denied the application and Respondent Gilbert appealed. By virtue of her employment as an Employment and Eligibility Specialist with the Respondent County of Butte, Respondent Gilbert is a local miscellaneous member of CalPERS.

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 Gilbert with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Gilbert's questions and clarified how to obtain further information on the process.

As part of CalPERS' review of her medical conditions, Respondent Gilbert was sent for two Independent Medical Examinations (IME) to Arthur M. Auerbach, M.D., a board-certified Orthopedic Surgeon, and Andrea R. Bates, M.D., a board-certified Psychiatrist and Director of the Acute Unit at BHC Sierra Vista Hospital and Assistant Clinical Professor in the Department of Psychiatry at U.C. Davis.

Dr. Auerbach examined Respondent Gilbert, reviewed her medical records, issued an IME report dated January 9, 2014, and testified at the hearing. Dr. Auerbach diagnosed Respondent Gilbert with mild right hip osteoarthritis and mild chronic left knee strain with intermittent popping. Dr. Auerbach opined that there were no specific job duties that respondent was unable to perform because of an orthopedic physical condition. In Dr. Auerbach's professional opinion, Respondent Gilbert was "not substantially incapacitated for the performance of her usual duties" based upon her orthopedic conditions.

Dr. Bates examined Respondent Gilbert, reviewed her medical records, issued an IME report dated October 13, 2013, and testified at the hearing. Dr. Bates opined that Respondent Gilbert was able to substantially perform her job duties. Dr. Bates explained that the reasons that she found Respondent Gilbert was not substantially incapacitated was "because any impairment was not to the degree that [respondent] had a substantial inability to perform the usual and customary duties of" her position. Dr. Bates gave Respondent Gilbert a Global Assessment of Functioning (GAF) score of 70, which is at the bottom of normal functioning, because Respondent Gilbert had some mild psychiatric symptoms that were sometimes bothersome and interfered with her life and her functioning, but were not so severe as to overwhelm or debilitate her.

Included in the disability retirement application was a Physician's Report on Disability submitted by Louella Regis, M.D. Dr. Regis indicated on the form that Respondent Gilbert was not substantially incapacitated from the performance of her usual job duties with respect to any orthopedic condition.

Respondent Gilbert and her mother, Agnes Catherine Kate Owings, testified at the hearing. Respondent Gilbert did not call any health care providers to testify; instead, she offered various reports, which were admitted as administrative hearsay.

The Administrative Law Judge (ALJ) found that there was no competent medical opinion presented at hearing to establish that Respondent Gilbert is substantially incapacitated to perform her usual job duties. The ALJ found that Dr. Auerbach persuasively testified that Respondent Gilbert's orthopedic conditions are not substantially disabling and that Dr. Bates persuasively testified that Respondent Gilbert's psychological conditions did not substantially incapacitate her from performing the usual duties of her job. Although Dr. Bates recognized that Respondent Gilbert's psychological conditions, particularly her ADHD, were "real," Dr. Bates found that Respondent Gilbert was responding well enough to her medications such that she was capable of functioning adequately at work.

The ALJ concluded that Respondent Gilbert'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.

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