

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Elisa Manzo (Respondent Manzo) was employed by the Oakland Unified School District (District) as an Administrative Assistant. As a result of her employment, she was a local miscellaneous member of CalPERS, subject to Government Code section 21150. Respondent Manzo submitted an application for service pending disability retirement, wherein she stated that she was unable to work due to a liver transplant, headaches due to stress, diabetes, bilateral carpal tunnel syndrome, depression, high blood pressure, and swollen feet.

CalPERS arranged for Respondent Manzo to be examined by Thomas Allems, M.D., a Board-Certified Internist, George Becker, M.D., a Board-Certified Psychiatrist, and John H. Welborn, Jr., M.D., a Board-Certified Orthopedist. These three doctors testified as Independent Medical Examiners (IME) in this case.

Dr. Allems, Dr. Becker and Dr. Welborn all reviewed Respondent Manzo's medical records, and prepared reports documenting their findings and conclusions. Each IME concluded that Respondent Manzo was not substantially incapacitated from performing her usual and customary duties.

Accordingly, CalPERS denied Respondent Manzo's application for disability retirement. Respondent Manzo appealed and a hearing was conducted on October 29, 2014, May 21, 2015, and June 30, 2015, by an Administrative Law Judge (ALJ) from the Office of Administrative Hearings.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law, Respondent Manzo has the burden of showing that she is substantially incapacitated from performing the usual and customary duties of her position as an Administrative Assistant. Prophylactic restrictions and risk of possible future injury cannot support a finding of disability. (*Mansperger v. Pub. Employees' Ret. System* (1970) 6 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 Manzo and the need to support her case with witnesses and documents. CalPERS provided Respondent Manzo with a copy of the Administrative Hearing Process pamphlet. CalPERS answered Respondent Manzo's questions and provided her with information on how to obtain further information on the process. CalPERS agreed to continue the hearing to May 21, 2015, so that Respondent Manzo could submit further medical evidence. She did not submit the evidence as required by court order so the matter was continued a second time to June 30, 2015.

At the hearing, Respondent Manzo testified that she performed general office work and answered the phone. She took complaints from parents and prepared a file for her supervisor. She testified about the stress of the job and is still angry, three years after she stopped working, about her alleged unfair treatment by the District.

On the first hearing day, Respondent Manzo did not offer any medical reports into evidence. Respondent Manzo testified about her work and her medical condition. She was provided time to obtain medical records and submit them to CalPERS so that CalPERS' IMEs could review the records and determine if the records changed their opinions.

Dr. Allems testified regarding Respondent Manzo's claims based on hypertension, diabetes and liver disease. Dr. Allems explained that Respondent Manzo could better manage her hypertension and diabetes. In his supplemental report, Dr. Allems explained that the records do not show that Respondent Manzo's liver condition has decompensated. Thus, he found Respondent Manzo not to be substantially incapacitated from the usual and customary duties of her position.

Next, Dr. Becker testified that Respondent Manzo had major depression after the death of her mother, but in his opinion, it had resolved by the time he saw Respondent Manzo in 2013. Dr. Becker found she did not have a psychiatric condition which substantially incapacitated her from the usual and customary duties of her position when she retired in 2012.

Finally, Dr. Welborn testified about Respondent Manzo's orthopedic conditions. Dr. Welborn explained that Respondent Manzo's bilateral hand pain was due to arthritis and she may have mild carpal tunnel. Dr. Welborn found that neither condition disables her from the performance of her usual and customary duties as an Administrative Assistant.

Following the first hearing day, the court left the record open so that Respondent Manzo could file additional medical records. Respondent Manzo did not send the medical records as required by the court order prior to the continued hearing date of May 21, 2015. On May 21, 2015, a hearing was held and CalPERS appeared by telephone.

The matter was again continued to June 30, 2015. Before that date, CalPERS was provided further medical records. The medical records were sent to the three IMEs. CalPERS received supplemental reports in which each IME explained that the medical records did not change their opinions.

In his Proposed Decision, the ALJ found that Respondent Manzo 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 Administrative Assistant. The ALJ explained that even if the Respondent's medical

records were admitted as direct evidence, they did not support a finding in Respondent Manzo's favor.

Accordingly, the ALJ denied Respondent Manzo's appeal. The Proposed Decision is supported by the law and the facts. Staff recommends 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.

September 17, 2015



JEANLAURIE AINSWORTH
Senior Staff Attorney