

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Toni Reynolds (Respondent) was employed by the Murrieta Valley Unified School District as a Child Care Worker. 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 is in a wheelchair and she suffered decubitus ulcers. In her application for disability retirement, Respondent claimed her limitations included sitting for long time periods. CalPERS arranged for Respondent to be examined by an Independent Medical Examiner, Dr. Neil Thomas Katz, a certified Orthopedic Surgeon.

After reviewing Dr. Katz's report and other medical evidence, CalPERS staff denied Respondent's application for disability retirement. Respondent appealed the decision and a hearing was held on July 1, 2015.

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

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.

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

At the hearing, Dr. Katz explained that decubitus ulcers did occur with people confined to a wheelchair. He explained Respondent had a history of these ulcers and based on her history and statements she made, he opined that she could be in a wheelchair for up to six hours without difficulty. As a result, Dr. Katz found that she was not substantially incapacitated from the usual and customary duties of her position.

Respondent testified about her condition. She explained that her position required a lot of activity and even though she was in a wheelchair, she was very active. She explained that she did not have time to take a break and get out of the wheelchair. Respondent explained that the issue of ulcers had gotten worse over time and that she reduced her work schedule in an attempt to continue working. Two of her supervisors testified about her duties and confirmed Respondent's account of her daily duties.

In finding in favor of Respondent, the Administrative Law Judge (ALJ) explained while Dr. Katz found she could sit in the wheelchair for six hours a day, Respondent's usual and customary duties required her to sit in the wheelchair for eight hours a day.

The ALJ found that Respondent met her burden of proof because the persuasive medical evidence from Dr. Katz established that Respondent was not able to sit in a wheelchair for over six hours a day, and she was required to sit in her wheelchair for eight hours. Respondent was found by the ALJ to be substantially incapacitated from her usual duties as a Child Care Worker.

The ALJ concluded that Respondent's appeal should be granted. 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. Because the ALJ granted Respondent's appeal, Respondent is not likely to file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

September 17, 2015


JEANLAURIE AINSWORTH
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