

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Gloria Hannah (Respondent) was employed by the County of Santa Clara as a Janitor. Due to her employment, Respondent is a miscellaneous member of CalPERS. She filed an application for disability retirement claiming disability on the basis of orthopedic conditions related to her spine. On her application, Respondent indicated that her spinal condition prevented her from lifting, pushing or pulling heavy objects; and walking and sitting for long periods of time.

CalPERS staff reviewed medical reports regarding Respondent's orthopedic condition and a written description of her usual and customary job duties. CalPERS retained William Stearns, M.D., F.A.A.O.S., an Orthopedic Surgeon, to conduct an Independent Medical Examination. Dr. Stearns examined Respondent and reviewed medical records and a written job description. Based on his examination and record review, Dr. Stearns found that Respondent is not substantially incapacitated from the performance of her duties as a Janitor. Thus, CalPERS denied Respondent's application for disability retirement. In response, Respondent submitted a timely appeal of staff's determination and a hearing was set to determine whether Respondent was substantially incapacitated from performance of her duties as a Janitor.

To be eligible for disability retirement, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the claimed basis for the disability must be permanent or of an extended and uncertain duration.

On July 6, 2015, CalPERS served by certified mail, and on July 29, 2015, CalPERS served by Federal Express, a Notice of Hearing, which provided the date, time, and place of the hearing, to Respondent. In the weeks prior to the hearing, both Legal Office staff and counsel for CalPERS called Respondent numerous times regarding the upcoming hearing. Staff left a message at one of Respondent's numbers regarding the hearing, however, a response to that message was never received; a message could not be left at Respondent's other number, and she never answered the phone. At the hearing, there was no appearance by Respondent, despite being served with the Notice of Hearing as documented by CalPERS' proof of service. Once CalPERS established that Respondent had notice of the hearing, pursuant to section 11440.20 of the Administrative Procedure Act, the Administrative Law Judge (ALJ) granted CalPERS' request to proceed with the hearing as a default.

Based on the medical reports submitted by CalPERS, the ALJ found that sufficient evidence did not establish that Respondent had a disability that substantially incapacitated her for the performance of her usual and customary duties as a Janitor for the County of Santa Clara. Consequently, Respondent's appeal was 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 motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the decision be vacated and a new hearing be granted.

September 17, 2015

A handwritten signature in blue ink, appearing to read "Renee Salazar", is written over a horizontal line.

RENEE SALAZAR
Senior Staff Attorney