

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Gerald Wolff (Respondent Wolff) was employed by the Employment Development Department as a Customer Service Representative and is a miscellaneous member of CalPERS.

Respondent Wolff submitted an application for Disability Retirement on the basis of an orthopedic (back) condition.

CalPERS reviewed written descriptions of Respondent Wolff's job duties and relevant medical reports submitted by Respondent Wolff. CalPERS also sent Respondent Wolff for an Independent Medical Examination with Orthopedic Surgeon, Joseph Serra, M.D. Based on relevant medical evidence, CalPERS determined Respondent Wolff was not substantially incapacitated from performance of his duties as a Customer Service Representative at the time his application for Disability Retirement was filed.

Respondent Wolff appealed CalPERS' determination and a hearing as to whether Respondent Wolff is substantially incapacitated from performing his usual and customary job duties was held on August 18, 2015.

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

Upon Respondent Wolff's request, CalPERS explained the hearing process to Respondent Wolff's spouse prior to the hearing. CalPERS also explained Respondent Wolff's need to meet his burden of proof with witnesses and documents. CalPERS answered other relevant questions presented by Respondent Wolff. CalPERS provided Respondent Wolff a copy of the administrative hearing process pamphlet. Counsel also referred Respondent Wolff to the Office of Administrative Hearings website for information regarding self-representation. CalPERS answered Respondent Wolff's questions and clarified how to obtain further information on the process.

Respondent Wolff testified at the hearing regarding his job duties and his inability to perform his usual and customary job duties due to severe pain and physical limitations. Respondent Wolff testified concerning his medical conditions and the medications he is prescribed due to the medical conditions. Respondent Wolff offered further medical reports from his treating physicians to substantiate his claims.

Dr. Serra testified regarding his examination of Respondent Wolff and the diagnosis. Dr. Serra opined that Respondent Wolff was not restricted from performing any job functions from an orthopedic point of view.

The ALJ concluded that Respondent Wolff's appeal should be denied based on the persuasive testimony of Dr. Serra. The Proposed Decision is supported by the law and the facts. CalPERS 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.

October 21, 2015.



PREET KAUR
Staff Attorney