

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Janet Horn (Respondent) applied for Industrial Disability Retirement, based on orthopedic conditions (lower back). By virtue of her employment as a Psychiatric Technician for Respondent Department of Development Services, Porterville Developmental Center (Respondent DDS), she was a state miscellaneous member of CalPERS. This matter was submitted by joint exhibits and simultaneous trial briefs, and the matter was concluded on August 7, 2015. Respondent Horn was represented by counsel throughout the process.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Ernest Miller. Dr. Miller's IME report includes a list of Respondent's complaints, a history of her injury, summary of physical examination, review of pertinent medical records, diagnoses, and a summary of Respondent's claimed disability. Dr. Miller concluded that Respondent is not substantially incapacitated for the performance of her duties.

Dr. Miller performed a physical exam of Respondent's areas of complaint. He noted that she made no attempt to demonstrate range of motion in her lumbar spine. Her reflexes and pulse were normal. There was no evidence of atrophy. Dr. Miller concluded that Respondent's subjective complaints exceed objective results (laboratory studies and physical examination). Dr. Miller's medical opinion is that Respondent is not substantially incapacitated to perform her usual duties as a Psychiatric Technician.

Respondent presented evidence from Dr. Richard Byrne, a board-certified Orthopedic Surgeon, who examined her in conjunction with her workers' compensation claim. Dr. Byrne found that Respondent experiences slight low back pain with radiation into her bilateral lower extremities, and occasional moderate pain in her lower back.

The Administrative Law Judge (ALJ) evaluated the medical evidence. He found that Dr. Miller's evaluation was the more persuasive assessment of Respondent's condition, and found Dr. Miller's diagnoses and conclusions more persuasive as well. The ALJ noted Respondent's seemingly exaggerated symptoms reported by both evaluators. She did not even try to perform the standard range of motion tests of her lumbar spine when she saw Dr. Miller, and did little better with Dr. Byrne. Dr. Byrne commented that the range of motion method is the preferred method for determining Respondent's impairment, but it was not used because he could not adequately examine her. In summary, the ALJ found that Respondent's reported symptoms and claimed disability were unsupported by the objective evidence relating to her condition as noted by Dr. Miller.

The ALJ concluded that Respondent failed to establish that she was substantially unable to perform her usual job duties, and therefore, was not entitled to Industrial Disability Retirement.

The ALJ concluded that Respondent's application 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.

October 21, 2015



ELIZABETH YELLAND
Senior Staff Attorney