

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Eva A. Schrepel (Respondent Schrepel) applied for service pending disability retirement on the basis of neurological (post traumatic brain syndrome, chronic pain syndrome, fibromyalgia, acute post traumatic headaches, cognitive impairments, loss of balance) and hematological (idiopathic thrombocytopenia purpura) conditions.

By virtue of her employment as an Associate Governmental Program Analyst (AGPA) for Respondent Department of Education, Respondent Schrepel was a state miscellaneous member of CalPERS.

Prior to the hearing, CalPERS explained the hearing process to Respondent Schrepel and the need to support her case with witnesses and documents. CalPERS provided Respondent Schrepel with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Schrepel's questions and clarified how to obtain further information on the process.

Despite proper notice being given to Respondent Schrepel and Respondent Department of Education, no appearances were made at the hearing by either respondent. Due to the failure to appear at the hearing, defaults of the respondents were taken by the Administrative Law Judge (ALJ). CalPERS made arguments and introduced documentary evidence, including medical reports, at the hearing on October 12, 2015.

As part of CalPERS' review of her medical condition, Respondent Schrepel was evaluated by an Independent Medical Examiner (IME). Eric Van Ostrand, M.D. is board-certified in Neurology and specializes in the peripheral nervous system and neuro-diagnostic evaluations. Dr. Van Ostrand prepared a report and testified at the hearing.

Dr. Van Ostrand reviewed Respondent Schrepel's medical, social, occupational and treatment history and performed a physical examination. In his report and by his testimony, Dr. Van Ostrand opined that, at the time of his examination, there was no neurological reason that Respondent Schrepel could not perform her job duties. He did indicate that there was a period of temporary incapacity from January 18, 2013, to May 14, 2013.

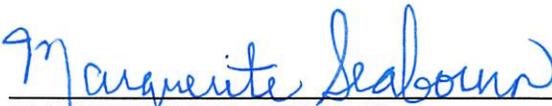
Dr. Van Ostrand also found that there was "unequivocal evidence of symptom embellishment" regarding Respondent Schrepel's systemic weakness, imbalance and pain complaints. Dr. Van Ostrand concluded that Respondent Schrepel was not substantially incapacitated, and that Respondent Schrepel did not have any neurologic issues beyond May 14, 2013.

The ALJ found Dr. Van Ostrand qualified to render expert opinions as set forth in his report by virtue of his training and experience. The ALJ further determined that the weight of the evidence supported the conclusion of Dr. Van Ostrand that Respondent Schrepel is not substantially incapacitated for the performance of her regular duties as an AGPA with the Department of Education.

The ALJ concluded that Respondent's appeal 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 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.

December 16, 2015

for 
CHRISTOPHER PHILLIPS
Senior Staff Attorney