

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent May Lloyd (Respondent) was employed by the California Department of Justice (DOJ) as a Senior Legal Analyst. By virtue of her employment, Respondent was a state miscellaneous member of CalPERS. Respondent submitted an application for disability retirement in January 2013, on the basis of a claimed psychological (emotional and mental stress) condition. CalPERS retained Jaga Glassman, M.D., a Board-certified Psychiatrist, to review Respondent's claimed condition. Dr. Glassman reviewed Respondent's medical records and job description, and conducted an Independent Medical Evaluation (IME). Dr. Glassman prepared a written report finding Respondent was not substantially incapacitated from performing the usual and customary duties of a Senior Legal Analyst because of any psychological condition. Relying upon Dr. Glassman's report, as well as other relevant medical and employment records of Respondent, CalPERS determined that Respondent was not substantially incapacitated from performing her usual and customary duties as a Senior Legal Analyst. CalPERS advised Respondent and DOJ of its determination to deny Respondent's application for disability retirement. Respondent timely appealed the determination and a hearing was held on September 22, 2015.

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. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

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

A copy of Dr. Glassman's written report was received into evidence at the hearing and Dr. Glassman testified at the hearing. Commenting on the contents of Dr. Glassman's written report, the ALJ noted:

Dr. Glassman noted that Ms. Lloyd was well engaged during the examination. Her thought processes were coherent, relevant, goal-directed, and there was no psychotic symptoms. She had a well put together physical presentation, was animated and spontaneous, but became 'a bit tearful' talking about the disrespectful and difficult treatment she was receiving at work.
(See Factual Finding No. 10.)

At hearing, Dr. Glassman described how, during his face-to-face evaluation of Respondent, he repeatedly asked her why she was unable to perform her normal duties. Dr. Glassman testified that Respondent never did relate that she was unable to perform the duties of a Senior Legal Analyst. Rather, Respondent related her increased

dissatisfaction with her job. This was noted by Dr. Glassman in a Supplemental Report, which the ALJ summarized, in relevant part, as follows:

Dr. Glassman noted that during his evaluation, 'I gave [Ms. Lloyd] every opportunity to tell me she was unable to function in her job as a paralegal, but she did not report this. She stated she was not functioning to her usual level of proficiency because of stressors in the workplace. She did not state that she was functioning to a low level of proficiency because of any mental symptoms or problems. She stated she no longer liked working with attorneys and felt that she could function better in a job not working with attorneys. To reiterate, she did not describe herself as being unable to perform in her job as a paralegal.'

(See Factual Finding No. 19.)

Dr. Glassman testified at the hearing consistently with his written reports. He stated that the fact that Respondent did work as a Senior Legal Analyst following her submission of her application for disability retirement was inconsistent with her claim that she was substantially incapacitated.

Respondent retained Raphael Morris, M.D., a Psychiatrist, to review records, perform an evaluation of her, prepare a written report and to testify on her behalf at the hearing. As part of the records considered by the ALJ, the Initial Evaluation form completed by Respondent contained the following entries:

- What is your weakness? "work"
- What are your goals for treatment? "get out of present work situation"
- What is your motivation for treatment? "appeal state disability denial"

A copy of Dr. Morris' written report was received into evidence and Dr. Morris testified at the hearing. Dr. Morris offered his opinion that Respondent was substantially incapacitated and could not return to work as a Senior Legal Analyst for DOJ.

Respondent testified, describing her employment with DOJ and her usual and customary duties. Respondent stated that her work environment changed in 2008 when she was assigned to work with five new attorneys. Respondent said that the new attorneys were disrespectful towards her, did not appreciate the work that she did and caused problems for her at work, leading to negative performance reviews. As a result, Respondent stated that she became increasingly angry, depressed, and stressed. Respondent treated with a psychologist and increased her consumption of alcohol. Respondent stated that, due to her poor work performance, she was afraid that she would be demoted, suspended, or terminated.

The Administrative Law Judge (ALJ) summarized Respondent's testimony as follows:

Ms. Lloyd's entire testimony on direct examination focused on her hostile work environment and its detrimental effect on her mental

condition. That testimony supported Dr. Glassman's opinions that her condition was transient and did not qualify as a permanent and stationary mental condition, but was instead due to her work environment. (See Factual Finding No. 30.)

After considering all of the evidence and testimony, the ALJ concluded:

[Respondent] failed to meet [her burden of proof] at this hearing. Although her upsetting, hostile work environment caused her problems, those problems did not rise to the level of being permanently disabling or incapacitating her from performing her job duties. As such, her application must be denied. (See Legal Conclusion No. 7.)

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.

December 16, 2015



RORY J. COFFEY
Senior Staff Attorney