

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Maria Gomez (Respondent) was employed by the Santa Ana Unified School District as a "mild-moderate paraeducator" and is a miscellaneous member of CalPERS.

Respondent submitted an application for disability retirement on the basis of orthopedic (back, knees, wrists) conditions.

CalPERS reviewed written descriptions of Respondent's job duties and relevant medical reports submitted by Respondent. CalPERS also sent Respondent for an Independent Medical Examination with Orthopedic Surgeon, Keola Chun, M.D. Based on relevant medical evidence, CalPERS determined Respondent was not substantially incapacitated from performance of her duties at the time her application for disability retirement was filed.

Respondent appealed CalPERS' determination and a hearing held on October 20, 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 or her position. Furthermore, the injury and condition that is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

Prior to the hearing, CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS counsel also attempted to contact Respondent to provide further information concerning the appeal process but was unable to reach her.

Respondent testified at the hearing. Respondent did not call a qualified medical professional to testify on her behalf. Respondent offered into evidence copies of limited medical records.

The only competent medical evidence offered at the hearing was Dr. Chun's medical report and testimony, which was entirely consistent with his report.

Despite this fact, the Administrative Law Judge (ALJ) found that the competent medical evidence offered by CalPERS in support of the determination that Respondent was no longer substantially incapacitated from performing her duties as a mild-moderate paraeducator was inadequate.

The ALJ criticized Dr. Chun's findings, conclusions, and opinion, but many of these criticisms were unfounded. For example, the ALJ concluded that Dr. Chun's testimony was biased because Dr. Chun believed Respondent was magnifying her symptoms. The ALJ; however, failed to provide any basis for his conclusions. Furthermore, the ALJ failed to acknowledge that during the hearing, Dr. Chun testified at length concerning why he believed Respondent was magnifying her symptoms.

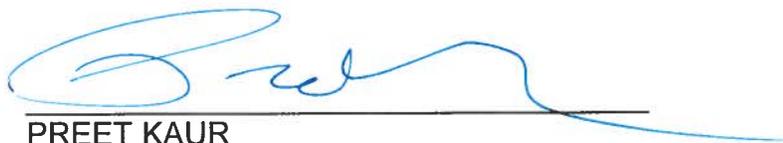
The ALJ also concluded that Dr. Chun was not familiar with Respondent's job duties, although the ALJ acknowledged Dr. Chun reviewed Respondents' job function analysis and the physical requirements of the job.

The ALJ also relied on incompetent medical evidence, an online article, to counter Dr. Chun's findings that Respondent did not suffer from wrists/hand conditions. The online article was cited by the ALJ in his Proposed Decision but was not presented into evidence by either party and is inaccessible online.

Ultimately, the ALJ concluded that Respondent's appeal should be granted. Staff argues that the Board adopt the Proposed Decision.

Since the member's appeal was granted, it is not likely she will file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

December 16, 2015



PREET KAUR
Staff Attorney