

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Cyndee McKelvie (Respondent) applied for disability retirement based on orthopedic conditions (reflex sympathetic dystrophy/complex regional pain syndrome). By virtue of her employment as a pre-school classroom assistant for Respondent El Dorado Office of Education (EDOE), she was a miscellaneous member of CalPERS. CalPERS determined that Respondent was not disabled. Respondent appealed this determination. A hearing was completed on August 31, 2015. Respondent represented herself at hearing.

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.

Respondent testified that beginning in 2010, she had difficulty performing her job duties due to persistent pain. Respondent last worked in August 2010. Thereafter, Respondent's treating physician diagnosed her with lumbar radiculopathy and sciatica, and opined that Respondent's incapacity would not be permanent. Respondent had steroid injections and medications, which were not helpful. Her treating physician notes that she has low back pain, right foot pain, and age appropriate degeneration of the cervical spine.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) by Orthopedic Surgeon Dr. Daniel D'Amico. Dr. D'Amico interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. He also performed a comprehensive IME examination. Dr. D'Amico opined that Respondent does not have radiculopathy or radiculitis. On examination, Respondent was normal, with some very slight tenderness in the upper sacroiliac notch. Her MRI was normal. Respondent's flexion, extension, straight leg raises and range of motion were normal. Dr. D'Amico testified that a triphasic bone scan could support a diagnosis of complex regional pain syndrome, but Respondent's triphasic bone scan was normal except for a positive finding on her right foot attributable to prior bunion surgery.

Dr. D'Amico opined that Respondent is not substantially incapacitated to perform her job duties as a pre-school Classroom Assistant.

At the hearing, Dr. D'Amico testified to his examination and report. Dr. D'Amico's medical opinion is that Respondent is not substantially disabled, even if she might be experiencing some tenderness.

Respondent testified on her own behalf and called her husband to testify. She did not call any physicians or other medical professionals to testify.

The Administrative Law Judge (ALJ) denied Respondent's appeal. The ALJ found that Respondent bears the burden to prove by a preponderance of evidence (based on competent medical evidence) that her symptomology renders her unable to perform her usual job duties. The ALJ found that Respondent failed to carry her burden of proof.

The ALJ concluded that Respondent is not permanently and substantially disabled or incapacitated from the performance of her job duties, and therefore, is not entitled to disability retirement.

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



RENEE SALAZAR
Senior Staff Attorney