

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Rebecca A. Fogle (Respondent Fogle) applied for service pending disability retirement on the basis of internal (endometrial cancer) and neurological (neuropathy) conditions. By virtue of her employment as an Associate Programmer Analyst (Specialist) for Respondent Department of General Services, Respondent Fogle was a state miscellaneous member of CalPERS. CalPERS denied Respondent Fogle's application and the instant appeal followed.

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

As part of CalPERS' review of her medical condition, Respondent Fogle was evaluated by two Independent Medical Examiners (IME). Michael Bronshvag, M.D. is board-certified in Internal Medicine and Neurology and Sophia Cole, M.D. is board-certified in Internal Medicine. Both IME doctors performed examinations, prepared reports of their findings, and testified at hearing.

Dr. Bronshvag reviewed Respondent Fogle's social history and work history and completed a physical examination. In his report and by testimony at hearing, Dr. Bronshvag indicated that Respondent Fogle's claims are subjective and undocumented, and that he found Respondent Fogle was not substantially incapacitated for the performance of her usual job duties.

Dr. Cole reviewed Respondent Fogle's history of present illness and related treatment, family history, work history, habits and daily activities, and performed a physical examination. It was Dr. Cole's opinion that Respondent Fogle suffered from slight sensory neuropathy, likely resulting from treatment utilizing the chemotherapeutic agents Taxol and Carboplatin. However, she found no evidence of cognitive defects on either the mental status examination or neurosensory examination. Dr. Cole could not substantiate any objective evidence of sensory loss, cognitive impairment, or physical impairment. Dr. Cole concluded that Respondent Fogle was not substantially incapacitated for the performance of her usual duties.

Respondent Fogle testified on her own behalf and did not present medical evidence to support her disability retirement application. The Administrative Law Judge (ALJ) found that the opinions of Drs. Bronshvag and Cole were persuasive and supported by competent medical evidence. Conversely, the ALJ noted that Respondent Fogle provided little evidence to support her claims of cognitive impairment and dedicated most of her time at hearing to criticizing the process for determining whether she was substantially incapacitated.

The ALJ concluded that Respondent Fogle'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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

December 16, 2015

for *Marquette Sabourin*

CHRISTOPHER PHILLIPS
Senior Staff Attorney