

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

Respondent Simin Shirazi (Respondent) petitions the Board to reconsider its adoption of the Proposed Decision (PD) of the Administrative Law Judge (ALJ) dated October 1, 2015. Staff argues that the Petition for Reconsideration should be denied.

Respondent was employed by the Department of Transportation as a Resident Engineer/Office Engineer and applied for disability retirement. On her application, Respondent claimed disability on the basis of severe fibromyalgia, chronic fatigue and adrenal fatigue. Pursuant to her application, Respondent's conditions limit her ability to concentrate and perform her job.

To be eligible for Industrial Disability Retirement, an individual must demonstrate, through competent medical evidence, that (s)he is substantially incapacitated from performing the usual and customary duties of her position at the time the Industrial Disability Retirement application is submitted. The injury or condition that is the basis for the claimed disability must be permanent or of an uncertain and extended duration. An individual has an affirmative duty to seek medical care and treatment and/or take reasonable steps to correct (her) medical problem. (*Reynolds v. City of San Carlos* (1981) 126 Cal.App.3d 208.) A disability cannot be considered permanent if the probabilities are great that (s)he would be restored to normal functioning if (s)he submits to surgery. (*Id.* at 216.) As the applicant, Respondent has the burden of proving entitlement to Industrial Disability Retirement. In *Harmon v. Board of Retirement of San Mateo County*, (1976) 62 Cal.App.3d 689, 691, and *Rau v. Sacramento County Retirement Board*, (1966) 247 Cal.App.2d 234, 238, the Courts held that the applicant has the burden of proof.

In Respondent's Petition for Reconsideration, she states that "many of the facts were not considered in the Proposed Decision. . ." Respondent's argument, however, lacks merit. Although a hearing for Industrial Disability Retirement generally takes one half or a full day, the hearing for this matter took two days. During the course of the two day hearing, Respondent was given the opportunity to present all facts and information she deemed necessary. In addition to her own testimony, Respondent presented the testimony of two lay witnesses and an expert witness. The ALJ heard the testimony of Respondent's expert witness despite CalPERS' objection that he not be allowed to testify because he was a retired chiropractor who never treated Respondent. Respondent also presented a binder full of medical and employment documents. All evidence presented was thoroughly considered and discussed in the proposed decision by the ALJ.

Respondent fails to provide a valid reason for her Petition for Reconsideration. Presumably, Respondent did not like the result after hearing. Respondent disagrees with the ALJ's findings of fact and legal analysis, but it is clear from the Proposed Decision that evidence was taken on the underlying facts, medical evidence, and Respondent's claimed disability. Exhibits from both parties were submitted for consideration by the ALJ. The ALJ simply found against Respondent. Respondent has

not raised any new evidence or change in circumstances which would warrant reconsideration.

Staff argues the Board deny the Petition for Reconsideration and uphold its decision.

Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. Respondent may file a writ petition in superior court seeking to overturn the decision of the Board.

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PREET KAUR
Senior Staff Attorney