

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Beverly Powers (Respondent) applied for disability retirement based on orthopedic (bilateral shoulder, back, neck, and right knee) and psychological (depression) conditions. By virtue of her employment as an Associate Governmental Program Analyst (AGPA) for Respondent California Department of Transportation (Respondent CalTRANS), she was a state miscellaneous member of CalPERS. CalPERS determined that Respondent was not disabled. Respondent appealed this determination. A hearing was completed on December 14, 2015. Respondent did not appear at hearing, nor did she present any physicians or other medical professionals to testify on her behalf.

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 provided her with information on how to obtain further information on the process.

As part of CalPERS' review of her medical condition, Respondent was sent for Independent Medical Examinations (IMEs) to Orthopedic Surgeon Dr. Robert Henrichsen and Psychiatrist Dr. Andrea Bates. Both IMEs examined and took a history from Respondent, reviewed records including her job descriptions, obtained her chief complaints and past history, performed a comprehensive IME examination, and submitted their findings in IME reports.

Dr. Henrichsen concluded that Respondent was not substantially incapacitated for the performance of her usual job duties as an AGPA with Respondent CalTRANS due to any orthopedic conditions. He acknowledged she had some chronic pain issues, but was unable to trace any of her pain to any orthopedic condition. Dr. Henrichsen also reviewed a surveillance DVD of Respondent doing various errands and carrying items, which did not cause him to change his opinion.

Dr. Bates found that Respondent demonstrated some symptoms of depression, but concluded that Respondent was not substantially incapacitated for the performance of her usual duties due to any psychological condition.

At the hearing, both IMEs testified to their examinations and reports. Both confirmed that in their medical opinions, Respondent is not substantially incapacitated to perform her usual job duties of an AGPA for CalTRANS.

The Administrative Law Judge (ALJ) found that no cause exists to grant Respondent's application for disability retirement. The ALJ found that Respondent bears the burden of proof to show 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 did not establish by competent, objective medical opinion, that, at the time of application, she was permanently disabled or incapacitated

from performing her usual duties of an AGPA for Respondent CalTRANS, and therefore, was not entitled to disability retirement.

The ALJ concluded that Respondent'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 motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

February 18, 2016.


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