

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Salma Juarez (Respondent) applied for industrial disability retirement based on orthopedic conditions (pain in left chest wall and back). By virtue of her employment as a Correctional Officer (CO) for Respondent Department of Corrections and Rehabilitation (Respondent CDCR), she was a state safety member of CalPERS. CalPERS determined that Respondent was not disabled. Respondent appealed this determination. A hearing was completed on December 16, 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 Examination (IME) to board-certified Orthopedic Surgeon Dr. James Fait. Prior to the IME, Dr. Fait reviewed the essential functions of a CO and Respondent's prior medical records. He conducted an interview of Respondent in order to ascertain the mechanism of injury; Respondent's history of injuries; why Respondent applied for an industrial disability retirement; what past treatments were rendered; and Respondent's occupational, social and family history.

After comprehensive IME and review of her records, Dr. Fait found no objective physical evidence to support Respondent's alleged pain. He diagnosed her with left chest wall intercostal muscle strain, and concluded that her pain did not render her substantially incapacitated and unable to perform the usual or customary duties of a CO.

Dr. Fait also found it significant that Respondent was currently employed as a teacher in elementary school classes for the Chula Vista school district. Dr. Fait explained that elementary school teachers are required to lift, stand, sit, change directions, reach above and below shoulder level, rearrange chairs, lift 20 to 30 pounds, and engage in a fair amount of movement on a consistent basis in order to keep children attentive. Dr. Fait acknowledged that while performing the duties of an elementary school teacher would not be as physically demanding as dragging an inmate out of a cell, it certainly required the same movements Respondent was required to do as a CO, and use of the area of the body where Respondent claimed to have been injured.

At the hearing, Dr. Fait testified to his examination and report. He confirmed that in his medical opinion, Respondent is not substantially incapacitated to perform the usual job duties of a CO for Respondent CDCR.

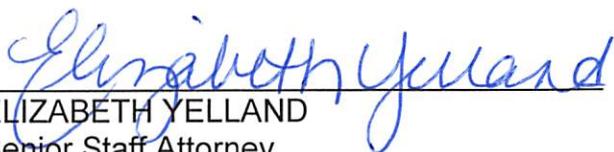
The Administrative Law Judge (ALJ) found no cause exists to grant Respondent's application for disability retirement. The ALJ found that Respondent bears the burden

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 the usual duties of a CO for Respondent CDCR.

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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

February 18, 2016.


ELIZABETH YELLAND
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