

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Martha Haywood (Respondent) applied for disability retirement based on orthopedic conditions (right and left shoulders, neck, right and left hips, knee) as well as asthma, stress and heart conditions. By virtue of her employment as a Motor Vehicle Technician (DMV Tech) for Respondent Department of Motor Vehicles (Respondent DMV), Respondent was a state miscellaneous member of CalPERS.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Mohinder Nijjar. Dr. Nijjar took a detailed history of complaints from Respondent, related to her orthopedic conditions. Respondent informed Dr. Nijjar that starting on March 6, 2007, she had problems with her neck and lifting with her right shoulder. She attributed the problems to her job, because she engaged in keying seven hours per day, and her work station was not ergonomically correct. The result was that she felt pain and discomfort. Respondent was referred to a doctor who diagnosed her with strain/sprain of the cervical spine, thoracic spine and lumbar spine, and strain/sprain of the right shoulder.

In September 2011, Respondent underwent arthroscopic surgery (acromioplasty, Mumford procedure, SLAP repair for a tear, and debridement of the subscapularis tendon). Respondent underwent a second surgery in December 2011, for adhesions and manipulation of the shoulder.

In his IME report, Dr. Nijjar noted a slight straightening of Respondent's cervical curvature and minimal tenderness in the midline C4-C5 area. He also noted that Respondent had minimal paraspinal muscle spasm on the right side and slight tenderness, some limited range of motion in the cervical spine and some pain. He further noted Respondent had well-healed surgery scars, and that there was no evidence of atrophy.

Dr. Nijjar opined that based on his medical evaluation, review of medical records and review of job duties, Respondent can perform all the functions of her position. Dr. Nijjar does not believe that Respondent is substantially incapacitated from the performance of her job duties as a result of her orthopedic conditions.

CalPERS sent a Physician's Report of Disability Form to Respondent's own treating orthopedist about Respondent's condition. Respondent's treating orthopedist also opined that Respondent was not substantially incapacitated from performance of her usual duties as a DMV Tech.

CalPERS determined that Respondent was not disabled. Respondent appealed this determination. A hearing was completed on November 12, 2015. Respondent was not represented by counsel at the 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 on her own behalf. She did not call any physicians or other medical professionals to testify.

Dr. Nijjar testified that Respondent's mild disc bulges are expected as part of the normal aging process. He found no radiculopathy, which could indicate compression of the discs. Dr. Nijjar testified that Respondent is not substantially incapacitated from the performance of her job duties as a result of her orthopedic conditions.

The Administrative Law Judge (ALJ) found that Respondent bears the burden 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 failed to carry her burden of proof. 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 as a DMV Tech for Respondent DMV.

The ALJ found that when all the evidence is considered, Dr. Nijjar's opinion that Respondent is not substantially incapacitated from performance of her duties as a DMV Tech is persuasive. The ALJ reasoned that Respondent's physical exam did not reveal any objective evidence that her orthopedic conditions would prevent her from performing the usual and customary duties of DMV Tech. The ALJ also reasoned that Dr. Nijjar's opinion was supported by Respondent's own orthopedic doctor.

The ALJ concluded that Respondent failed to establish that she was substantially unable to perform her usual job duties as a DMV Tech, and therefore, found that Respondent 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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

February 18, 2016


ELIZABETH YELLAND
Senior Staff Attorney