

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Deborah L. Buchko (Respondent Buchko) applied for service pending disability retirement based on orthopedic conditions (shoulder, neck, hands, and carpal tunnel syndrome). By virtue of her employment as an Associate Governmental Program Analyst (AGPA) for Respondent California Department of Transportation (CDOT), Respondent Buchko was a state miscellaneous member of CalPERS.

CalPERS determined that Respondent Buchko was not disabled, and she appealed this determination. A hearing was completed on November 6, 2015.

Respondent Buchko claimed that on October 3, 2011, she fell down several stairs, landing on her hands and knees. Respondent Buchko continued to work over the next couple of weeks, before she sought medical treatment. Respondent Buchko alleged that she is unable to perform the essential functions of her job as an AGPA because of her injuries and pain.

As part of CalPERS' review of her medical condition, Respondent Buchko was sent for an Independent Medical Examination (IME) by Orthopedic Surgeon Dr. Joseph B. Serra. Dr. Serra interviewed Respondent Buchko, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. He also performed a comprehensive examination. Dr. Serra found that Respondent Buchko's subjective complaints far outweigh any objective findings, and that his examination reveals very little in the way of objective findings.

Dr. Serra opined that Respondent Buchko is not substantially incapacitated to perform her job duties as an AGPA.

At the hearing, Dr. Serra testified to his examination and report. Dr. Serra's medical opinion is that Respondent Buchko is not substantially disabled, even if she might be experiencing some pain and discomfort.

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

Respondent Buchko testified on her own behalf and called her husband to testify. She did not call any physicians or other medical professionals to testify.

The Administrative Law Judge (ALJ) denied Respondent Buchko's appeal. The ALJ found that Respondent Buchko bears the burden to prove 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 Buchko failed to carry her burden of proof.

The ALJ concluded that Respondent Buchko did not meet her burden of producing persuasive medical evidence that she is substantially incapacitated for the performance of her usual job duties, and therefore, is not entitled to disability retirement.

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



JOHN L. SHIPLEY
Senior Staff Attorney