

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Merry Grisak (Respondent) applied for disability retirement based on internal conditions (extreme fatigue, fibromyalgia and Epstein-Barr virus). By virtue of her employment as a Staff Services Manager I (SSMI) for Respondent Department of Transportation Headquarters Operation (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 3, 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 two Independent Medical Examinations (IMEs) to Neurologist and Internist Dr. Michael Bronshvag and Rheumatologist Dr. Douglas Haselwood. 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. Bronshvag diagnosed Respondent with non-disabling fibromyalgic-type subjective complaints. He opined that Respondent was able to perform the full range of her job duties of an SSM I. In a Supplemental IME Report, Dr. Bronshvag opined that she had a history of normal exams, and concluded that, "On the basis of her work record, the normal physical examinations, and the absence of any objectively documented difficulties relevant to inflammatory muscle, bone and joint disorder, mononucleosis, etc., I do not substantiate her claim or fear that she is disabled now, and was actually also disabled before she successfully retired." He opined that Respondent was not substantially incapacitated from performing the usual duties of an SSM I.

Dr. Haselwood concluded that Respondent "possessed the physical capabilities of participating in the essential and substantial physical requirements of her work" as an SSM I. He found there were no specific job duties she was unable to perform. He opined that Respondent was not substantially incapacitated from performing the usual duties of an SSM I.

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

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

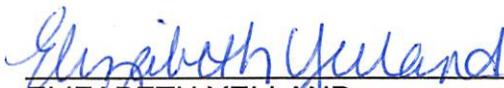
of proof to show by a preponderance of evidence (based on competent medical evidence) that her symptomology renders her unable to perform her usual job duties. The ALJ found that Respondent did not establish by competent, objective medical opinion, that, at the time of application, she was permanently disabled or incapacitated from performing her usual duties of an SSM I for Respondent CalTRANS.

The ALJ concluded that Respondent failed to establish that she was substantially unable to perform her usual job duties as an SSM I, 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 1152(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

February 18, 2016.



ELIZABETH YELLAND
Senior Staff Attorney