

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Madhu Ghuman (Respondent Ghuman) was employed by the Employment Development Department as a Disability Insurance Program Representative and is a miscellaneous member of CalPERS.

Respondent Ghuman submitted an application for disability retirement on the basis of orthopedic (low back, carpal tunnel, left shoulder, bilateral elbow, bilateral wrist and hand) conditions.

CalPERS reviewed written descriptions of Respondent Ghuman's job duties and relevant medical reports submitted by Respondent Ghuman. CalPERS also sent Respondent Ghuman for an Independent Medical Examination with orthopedic surgeon Daniel D'Amico, M.D. Based on relevant medical evidence, CalPERS determined that Respondent Ghuman was not substantially incapacitated from performance of her duties as a Disability Insurance Program Representative at the time her application for disability retirement was filed.

Respondent Ghuman appealed CalPERS' determination and a hearing as to whether Respondent Ghuman is substantially incapacitated from performing her usual and customary job duties was held on November 18, 2015.

To be eligible for disability retirement, competent medical evidence must demonstrate that the member is substantially incapacitated from performing the usual and customary duties of her position. Furthermore, the injury and condition that is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

A hearing on this matter was held on November 18, 2015. Prior to the hearing, CalPERS explained the hearing process to Respondent Ghuman and the need to support her case with witnesses and documents. CalPERS provided Respondent Ghuman with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Ghuman's questions and clarified how to obtain further information on the process.

Respondent Ghuman testified at the hearing regarding her inability to perform her usual and customary job duties due to severe pain and physical limitations. Respondent Ghuman testified concerning her medical conditions and the medications she is prescribed. Respondent Ghuman offered further medical reports from her treating physicians to substantiate her claims.

Respondent Ghuman also presented the testimony of her former co-worker, Evangeline Seveses. Ms. Seveses testified concerning her observations of Respondent Ghuman during the time they worked together.

Dr. D'Amico testified regarding his examination of Respondent Ghuman and the diagnosis. Dr. D'Amico opined that Respondent Ghuman was not restricted from performing any job functions from an orthopedic point of view.

The Administrative Law Judge (ALJ) concluded that Respondent Ghuman's appeal should be denied because she was unable to present competent medical evidence demonstrating she is substantially incapacitated from performing her job duties. 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



PREET KAUR
Senior Staff Attorney