

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Kristen Del Carlo (Respondent) applied for Industrial Disability Retirement (IDR) based on an orthopedic condition (low back pain). By virtue of her employment as a Traffic Officer for Respondent California Department of Highway Patrol (Respondent CHP), Respondent was a safety member of CalPERS. CalPERS determined that Respondent was not substantially incapacitated from the performance of her duties. Respondent appealed this determination and a hearing was completed on October 26, 2015.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Daniel D'Amico. Dr. D'Amico took a detailed history of complaints from Respondent related to her orthopedic conditions. Respondent informed Dr. D'Amico that on August 4, 2006, she was demonstrating how to install a child car seat when she heard a "pop" and immediately felt pain in her low back.

Dr. D'Amico found that Respondent's range of motion was within acceptable limits, although she had some tenderness and stiffness in her low back. Dr. D'Amico opined that Respondent was not substantially incapacitated for the performance of her normal duties as a Traffic Officer with the CHP due to her orthopedic condition. Dr. D'Amico specifically evaluated her according to the CHP 14 Critical Tasks and found that Respondent could perform them for any short period of time. Dr. D'Amico concluded: "She is well toned. She has good muscles in her back, and her physical findings do not suggest any significant permanent [sic] of neurologic dysfunction, loss of strength, or even significant loss of low back mobility. So my conclusion is that based on her age, her fit condition, she is definitely not substantially incapacitated nor does she have serious bodily injury."

Respondent was also treated by several workers' compensation doctors who prescribed medication and released her to light duty. None of the doctors ever opined that she was substantially incapacitated for the performance of her normal job duties. While she was placed on light duty, there was no evidence presented of any specific restrictions that any physician placed on her ability to work. There was no evidence of whether any limitations listed in Respondent's IDR application were self-imposed, or ordered by one or more of her physicians. Dr. D'Amico reviewed all these reports as part of his examination.

Respondent was represented by counsel at the hearing. Respondent testified on her own behalf, and submitted medical reports from various doctors. She did not call any physicians or other medical professionals to testify.

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 her application, she was permanently disabled or incapacitated from performing her usual duties as a Traffic Officer for Respondent CHP.

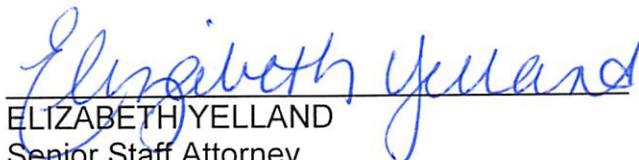
The ALJ found that when all the evidence is considered, Dr. D'Amico's opinion that Respondent is not substantially incapacitated from performance of her duties as a Traffic Officer is persuasive. The ALJ found that Respondent may experience some low back pain, but concluded, "discomfort alone, even if it makes performance of one's duties more difficult, is insufficient to establish a substantial incapacity."

The ALJ concluded that Respondent failed to establish that she was substantially unable to perform her usual job duties as a Traffic Officer, and therefore, found that Respondent was not entitled to Industrial 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


ELIZABETH YELLAND
Senior Staff Attorney