

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Darlene Parker (Respondent) was employed by Respondent San Joaquin County Office of Education (County) as an Account Specialist. The County contracted with CalPERS to provide retirement benefits for its employees. By virtue of her employment, Respondent was a miscellaneous member of CalPERS. Respondent submitted an application for disability retirement on the basis of claimed orthopedic, rheumatologic, and psychiatric conditions (fibromyalgia, chronic fatigue, carpal tunnel syndrome, and bilateral nerve damage in her arms). CalPERS staff reviewed relevant medical reports and a written description of Respondent's usual and customary duties as an Account Specialist for the County. An independent medical examination (IME) of Respondent was performed by three different physicians, all Board-certified in their respective areas of specialized practice. All three physicians prepared written reports in which they expressed their opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of her position as an Account Specialist. Staff determined that Respondent was not disabled and denied her application for disability retirement. Respondent appealed CalPERS staff's determination and a hearing was held on December 7, 2015.

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.

In order to be eligible for disability retirement, competent medical evidence must demonstrate that the individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

Respondent testified at the hearing, describing her usual and customary duties as an Account Specialist for the County. Respondent testified that she experienced migraine headaches but was still able to perform her duties. Respondent stated that she was diagnosed with fibromyalgia sometime between 2005 and 2007 but, again, was able to perform her duties. Respondent claimed that in 2012 she was either tardy or missed work entirely because of complaints of pain, fatigue, or stress. By 2013, Respondent admitted that she had significant problems with her supervisor, such that Respondent was advised that she had an option of either resigning or retiring. If Respondent chose not to resign or retire, her employer had advised her that it would commence termination proceedings against her. In this situation, Respondent elected to service retire with a pending claim for disability retirement.

Respondent did not call any physician or other health care professional to testify on her behalf. Respondent did not offer into evidence copies of any medical reports from physicians or other health care professionals who had either treated her or examined her.

Douglas Haselwood, M.D. is a Board-certified rheumatologist. Dr. Haselwood reviewed medical reports regarding Respondent, a written description of her usual and customary job duties and performed an independent medical evaluation of Respondent. A copy of Dr. Haselwood's written report was received by the Administrative Law Judge (ALJ) into evidence. Dr. Haselwood testified at the hearing. With respect to fibromyalgia, Dr. Haselwood explained that the American College of Rheumatology created the term 'fibromyalgia syndrome' "as a mechanism for characterizing and studying patients with cryogenic (of obscure, doubtful, or unascertainable origin) musculoskeletal pain" and that it was "never intended to serve as a mechanism for determining levels of impairment/disability in the medical legal setting." Dr. Haselwood observed that, because fibromyalgia is based entirely upon an individual's self-reporting of complaints, there is "no objectively based mechanism for determining the actual 'severity' of fibromyalgia in any given individual."

On examination of Respondent, Dr. Haselwood found that her joints were "normal without consistent joint tenderness or evidence of chronic or active arthritis/synovitis." Respondent had complaints of soft tissue tenderness, diffusely described as being along her neck, across her body and into her legs and arms. Dr. Haselwood found that, after repeated testing, "this soft tissue tenderness was too inconsistent and poorly localized to allow any credible mapping of tender points."

Dr. Haselwood felt that Respondent had age appropriate complaints of musculoskeletal discomfort, at times. However, Dr. Haselwood felt that Respondent exaggerated or amplified her complaints. In his opinion, Respondent had the physical capabilities to perform the largely sedentary work of an Account Specialist. Dr. Haselwood stated that, in his opinion, Respondent was not substantially incapacitated from performing her usual and customary duties based on any rheumatologic condition.

Arthur Auerbach, M.D. is Board-certified in orthopedic surgery. Dr. Auerbach reviewed medical reports regarding Respondent, a written job description and performed an independent medical examination of Respondent. A copy of Dr. Auerbach's written report was received into evidence by the ALJ. Dr. Auerbach testified at the hearing. Dr. Auerbach found a minimal loss of range of motion regarding Respondent's cervical (neck) movements. Dr. Auerbach found no evidence of nerve root irritation in examination of Respondent's elbows. Respondent could make a fist with both hands, had good or "normal" hand grip strength, and had normal motor/muscle strength in her shoulders, elbows, forearms, and fingers. Respondent had normal sensation in her arms.

Dr. Auerbach's opinion was that Respondent had age appropriate degenerative disc disease in her cervical spine, which could cause complaints of neck pain. Dr. Auerbach

also believed there was evidence of “very mild” carpal tunnel syndrome in Respondent’s wrists. However, Dr. Auerbach was clear that neither the cervical condition nor her bilateral wrists were of a sufficient severity to prevent or disable Respondent from performing her usual and customary duties. Significantly, Respondent “told Dr. Auerbach she could perform her regular workload as an Account Specialist.”

Gary Cavanaugh, M.D. is a Board-certified psychiatrist. Dr. Cavanaugh reviewed relevant medical and psychological reports, a written description of the usual and customary job duties of an Account Specialist and performed a mental status examination of Respondent. A copy of Dr. Cavanaugh’s written report was received into evidence by the ALJ and Dr. Cavanaugh testified at the hearing.

Respondent told Dr. Cavanaugh that she had experienced symptoms of depression for at least 25 years, including the time that she worked as an Account Specialist for the County. Respondent described taking different antidepressant medications with differing results. At the time of his evaluation, Respondent was taking Effexor on a daily basis and reported that “It’s helping a lot.” The ALJ summarized Dr. Cavanaugh’s testimony and opinions as follows:

Dr. Cavanaugh’s testimony was consistent with his IME report and supplemental report. He also testified that respondent’s appearance and actions during the examination were inconsistent with someone suffering from severe depression or severe functional problems. For example, Dr. Cavanaugh opined that someone who has severe depression or severe functional problems would be poorly groomed, apathetic, lacking in energy and motivation, and unable to concentrate. On the contrary, respondent was well-groomed, alert, and fully involved with the evaluation process. There was no indication she had deficits in her memory or concentration. Dr. Cavanaugh further opined that respondent’s anxiety about her future was consistent with someone who had recently lost his or her job.

(See Factual Finding No. 22.)

Dr. Cavanaugh ultimately stated his opinion that Respondent was not substantially incapacitated from performing the usual and customary job duties of an Account Specialist for the County because of any psychiatric condition.

After considering all of the evidence and testimony, the ALJ found that “No competent medical evidence was presented to establish that respondent was substantially incapacitated to perform the usual and customary duties of an Account Specialist... The IME reports and testimony of Drs. Haselwood, Cavanaugh, and Auerbach were persuasive that respondent is not substantially incapacitated.”

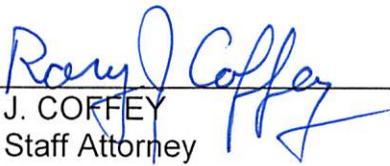
(See Factual Finding No. 39.)

Accordingly, the ALJ concluded that Respondent had failed to meet her burden of proving, on the basis of competent medical evidence, that she was substantially

incapacitated and that, therefore, 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.

March 16, 2016



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Senior Staff Attorney