

ATTACHMENT C
RESPONDENT'S ARGUMENT

Received

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CalPERS Board Del

Respondent's Argument

- The issue of whether respondent, Safia S. Ali, is permanently disabled or incapacitated from performance of her duties as a Tax Program Technician I should not be on the basis rheumatology but rather orthopedic condition of hand and spine pain.
- Respondent claimed disability due to her orthopedic condition of hand and wrist pain due to tendinitis and some carpal tunnel formation.
- Reports from Dr. Yi Yi Myint have repeatedly stated respondent has permanent restriction and there is no way to get better but to reduce the use of hands. Dr. Myint has also stated during appointments that the respondent has a condition of tendinitis that is permanent. After being asked to clarify what permanent restriction means, Dr. Myint stated that it is equivalent to a permanent disability.
- Doctors used have been doctors related to worker's compensation cases and they have workers compensation reports. Those doctors should not be used to determine the condition because they hold a bias.
- Both hands have had cases with worker's compensation and those reports hold bias against Ms. Ali. Those reports are viewed by the Independent Medical Reviewer chosen by CalPERS and thus the bias remains.
- Tests performed by Independent Medical Evaluation would only check level of pain/strength at the given time but not repeatedly for hours as is done at work. To see a person's level of pain at work, one would need to do those tests repeatedly for an 8 hour work day to determine if respondent is able to do her job. As is the case Safia S. Ali would be physically incapable of performing those duties repeatedly at work. This she should be considered permanently disabled.

- This case has been handled unfairly and respondent has not been given a fair trial with the odds against her.
- On January 21, 2014, respondent received request to be evaluated by Dr. Scott Anderson as part of the disability application process. The exam was held on January 31, 2014.
- On May 7, 2015 a notice of continued hearing was received that the hearing has been continued from May 4, 2015 to July 30, 2015.
- John A. Mikita was the attorney representing CalPERS at this time. There were phone communications with the respondent and John A. Mikita. In them Mr. Mikita needed the hearing date changed from July 30, 2015 because the doctor was unavailable to testify that day. He said he was willing to keep the current July 30, 2015 hearing date if Ms. Ali sent a copy of all medical reports/letters that she intended to use at the hearing. He would also exchange his reports with her as well. He stipulated that during the hearing all medical reports would be used as direct evidence and what the attorney and respondent say would be considered heresy. That was his condition for keeping the July 30, 2015 hearing date. After receipt of Ms. Ali's reports, Mr. Mikita failed to provide his reports to Ms. Ali in time for the hearing dated July 30, 2015.
- Before the hearing Mr. Mikita called Ms. Ali to inform her that the Independent Medical Review that was held on January 31, 2014 by Dr. Scott Anderson was done with the wrong doctor. He said Ms. Ali should have been seen by an orthopedic doctor and not a rheumatologist. He informed her that there would be no July 30, 2015 hearing because he would ask the judge for a continuance. He said she did not need to go to the hearing on July 30, 2015 because there would be no hearing. He also said she would need to be evaluated again by a new doctor.
- On August 4, 2015, the respondent received a continuance notice from Judge Catherine B. Frink. She reported that the matter was set for July 30, 2015. John Mikita appeared but Safia S. Ali did not. A request for continuance was granted

yet again and the hearing was reset for October 8, 2015.

- On August 10, 2015, respondent received notification of another Independent Medical Examination by orthopedic Dr. Harry Khasigian. The appointment was held on August 18, 2015.

- On September 16, 2015 there was a request for continuance by CalPERS by the new attorney of CalPERS, Elizabeth Yelland. Reasons for the continuance included reasons that were invalid such as the fact that no continuances had ever been granted before when in fact two continuances had already been granted to CalPERS in this matter. Ms. Ali emailed pictures of the proof of prior continuances to CalPERS and Office of Administrative Hearings but without regard, a continuance was once again granted to CalPERS and the stipulation that no doctors would be present was also disregarded.

- On September 16, 2015, the continuance was granted by a different judge, Dian M. Voters and not the original Judge Catherine B. Frink.

- On October 7, 2015, respondent was served with the fourth hearing date since the case began and the new date was set for January 19, 2016.

- On October 19, 2015, respondent received a notice of case reassignment and the attorney for CalPERS changed yet again to Mr. John Shipley.

- This case has been handled unfairly and Ms. Ali has not received due process. Ms. Ali appeals this proposed decision to deny her disability retirement.

Safia Shimen Ali