

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Edith Davenport (Respondent) applied for disability retirement on February 14, 2014, based on psychological (post-traumatic stress disorder, panic attacks, anxiety, depression, loss of memory, and inability to communicate) conditions caused by working as a Police Dispatcher (Dispatcher) for West Cities Police Communications (West Cities). On October 20, 2014, CalPERS determined that Respondent was not substantially incapacitated from the performance of her duties as a Dispatcher for West Cities. Respondent appealed. A hearing was completed on December 9, 2015. Respondent was represented by counsel at the hearing.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to board certified Psychiatrist Dr. Lawrence Warick. Dr. Warick reviewed records including her job descriptions; interviewed Respondent and obtained her chief complaint and histories; and conducted a mental status examination. He prepared an IME report, in which he reached diagnostic impressions and answered specific questions.

Dr. Warick concluded that Respondent is not substantially incapacitated from the performance of her usual duties, is able to perform her duties as a Dispatcher, but has chosen to change careers. He opined, "Though still somewhat symptomatic, she is not disabled and is functioning quite adequately as well as her symptoms being controlled by medication. Her symptoms have also diminished."

At the hearing, Dr. Warick testified to his examination and report. Dr. Warick's medical opinion is that Respondent is not substantially incapacitated to perform the duties of Dispatcher.

At the hearing, Respondent testified on her own behalf. She did not call any medical professionals or other witnesses to testify.

The Administrative Law Judge (ALJ) found that Respondent bears the burden to show by a preponderance of the evidence (based on competent medical evidence) that she is substantially incapacitated for the performance of her usual job duties. He concluded that she did not meet her burden of showing that at the time of her application, on the basis of mental or emotional disorders, that she was substantially incapacitated. He held that the weight of the medical evidence tends to show that Respondent is not incapacitated by reason of her psychological condition and its associated physical condition, and is therefore not eligible to retire for disability.

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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

March 16, 2016.


ELIZABETH YELLAND
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