

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Editha Moring (Respondent Moring) was employed by the Sonoma Developmental Center as a Psychiatric Technician Assistant and is a miscellaneous member of CalPERS.

Respondent Moring submitted an application for disability retirement on the basis of orthopedic (low back, left arm, and shoulder) conditions.

CalPERS reviewed written descriptions of Respondent Moring's job duties and relevant medical reports submitted by Respondent Moring. CalPERS also sent Respondent Moring for an Independent Medical Examination (IME) with orthopedic surgeon, Andrew Brooks, M.D.

Based on relevant medical evidence, CalPERS determined Respondent Moring was not substantially incapacitated from performance of her duties as a Psychiatric Technician Assistant at the time her application for disability retirement was filed.

Respondent Moring appealed CalPERS' determination and a hearing as to whether Respondent Moring is substantially incapacitated from performing her usual and customary job duties was held on November 12, 2015.

To be eligible for disability retirement, competent medical evidence must demonstrate the member is substantially incapacitated from performing the usual and customary duties of his or 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.

On January 12, 2015, CalPERS sent Respondent Moring a Notice of Hearing, informing her of the date, time and location of the hearing. The Notice of Hearing informed Respondent Moring of her right to object to the place of hearing and of her right to present any relevant evidence. Prior to the hearing, CalPERS provided Respondent Moring with a copy of the administrative hearing process pamphlet. On November 9, 2015, CalPERS counsel also attempted to contact Respondent Moring to determine if she had any questions concerning the appeal process but was unable to reach her.

Respondent Moring was not present and was not represented at the hearing. At the hearing, CalPERS presented the IME report of Dr. Brooks.

The Administrative Law Judge (ALJ) concluded that Respondent Moring'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 motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

March 16, 2016



PREET KAUR
Senior Staff Attorney