

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Yvette Bravo (Respondent Bravo) was employed by the Stockton Unified School District (District) as an Office Assistant and is a miscellaneous member of CalPERS.

Respondent Bravo submitted an application for disability retirement on the basis of orthopedic conditions (back and neck), lupus, hepatitis C, and fibromyalgia. The application was received on May 10, 2012 by CalPERS. Respondent Bravo requested her application be backdated to September 20, 2006.

CalPERS reviewed written descriptions of Respondent Bravo's job duties and relevant medical reports submitted by Respondent Bravo. CalPERS also sent Respondent Bravo for an Independent Medical Examination with orthopedic surgeon Joseph Serra, M.D. Based on relevant medical evidence, CalPERS determined Respondent Bravo was not substantially incapacitated from performance of her duties as an Office Assistant at the time her application for disability retirement was filed.

Since CalPERS denied her application for disability retirement, Respondent Bravo's request to backdate her application was moot, and therefore denied.

Respondent Bravo appealed CalPERS' determination. A hearing as to whether Respondent Bravo is substantially incapacitated from performing her usual and customary job duties was held on January 26, 2016. The Administrative Law Judge (ALJ) was also asked to determine the appropriate date for Respondent Bravo's disability retirement to commence.

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

Prior to the hearing, CalPERS explained the hearing process to Respondent Bravo and the need to support her case with witnesses and documents. CalPERS provided Respondent Bravo with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Bravo's questions and clarified how to obtain further information on the process.

Respondent Bravo testified at the hearing regarding her job duties and her inability to perform her usual and customary job duties due to severe pain and physical limitations. Respondent Bravo testified concerning her medical conditions and the medications she is prescribed due to the medical conditions. Respondent Bravo offered further medical reports from her treating physicians to substantiate her claims. Respondent Bravo also testified that she failed to file an application for disability retirement when she stopped working because she thought she had to be 55 years of age to file for disability retirement.

Respondent Bravo presented the testimony of her mother, who testified regarding her observations of Respondent Bravo's medical conditions.

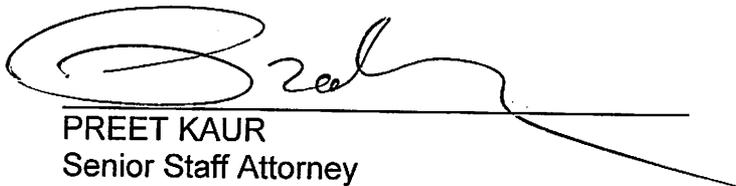
Dr. Serra testified regarding his examination of Respondent Bravo and the diagnosis. Dr. Serra opined that Respondent Bravo was not restricted from performing any job functions from an orthopedic point of view.

CalPERS presented evidence that Respondent was aware of her right to file for disability retirement in 2006. Respondent Bravo herself also admitted that she was informed by CalPERS in 2006 that she could file for disability retirement.

The ALJ concluded that Respondent Bravo did not present competent, objective medical evidence to establish that she was permanently disabled or incapacitated from performance of her duties as an Office Assistant at the time she filed her disability retirement application. Therefore, Respondent Bravo is not entitled to disability retirement and her 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.

April 20, 2016



PREET KAUR
Senior Staff Attorney