ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

Respondent Safia S. Ali (Respondent Ali) petitions the Board of Administration (Board) to reconsider its adoption of the Proposed Decision (PD) of the Administrative Law Judge (ALJ) dated January 25, 2016. The Board adopted the PD on March 16, 2016. Staff argues that the Petition for Reconsideration should be denied.

Respondent Ali worked as a Tax Program Technician I (Technician) for Respondent California Franchise Tax Board (Respondent FTB). By virtue of her employment, Respondent Ali was a state miscellaneous member of CalPERS.

To be eligible for disability retirement, an individual must demonstrate, through competent medical evidence, that she is substantially incapacitated from performing the usual and customary duties of her position at the time the disability retirement application is submitted. The injury or condition that is the basis for the claimed disability must be permanent or of an uncertain and extended duration. As the applicant, Respondent has the burden of proving entitlement to disability retirement. In *Harmon v. Board of Retirement of San Mateo County*, (1976) 62 Cal.App.3d 689, 691, and *Rau v. Sacramento County Retirement Board*, (1966) 247 Cal.App.2d 234, 238, the Courts held that the applicant has the burden of proof.

In Respondent Ali's Petition for Reconsideration, she states that "this case has been handled unfairly and respondent has not been given a fair trial with the odds against her." To support her claim, she indicates that the claim should not be on the basis of rheumatology, but rather orthopedic conditions. In addition, Respondent Ali takes issue with the number of continuances that were granted by the ALJ in this matter. Respondent Ali also indicates that prior counsel for CalPERS stipulated that during the hearing all medical records would be used as direct evidence, and what the attorney and Respondent Ali say would be considered hearsay. Last, Respondent Ali argues that there were medical records that were not considered by the ALJ that should have been considered.

First, Respondent Ali was examined by both a rheumatologist and orthopedic surgeon. Both doctors testified at the hearing, and the ALJ relied on this testimony in concluding that Respondent Ali is not substantially incapacitated.

Second, for certain reasons that were beyond CalPERS' control, this matter was continued on three separate occasions. However, neither the number of continuances nor the length of time between when Respondent Ali filed her disability retirement application and the date the hearing took place was prejudicial to Respondent Ali. The hearing afforded her the ability to present all of the evidence to support her case.

Third, there is no evidence in CalPERS' file that would indicate an agreement was entered between CalPERS and Respondent Ali regarding medical records coming in as direct evidence. Furthermore, this contention was never raised by Respondent Ali at the hearing for the matter. If Respondent Ali believed the records were going to come in as direct evidence, this should have been raised at the hearing, and not by virtue of a Petition for Reconsideration.

Fourth, Respondent Ali apparently wants the ALJ to now consider additional medical records that were not submitted as evidence at the hearing. There is no explanation as to why the medical records were not submitted at the hearing. Prior to the hearing, CalPERS explained the hearing process to Respondent Ali and the need to support her case with witnesses and documents. CalPERS provided Respondent Ali with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Ali's questions and clarified how to obtain further information on the process. Respondent did present some medical records, so she presumably knew that she could utilize medical records at the hearing.

Respondent Ali testified at hearing, complaining of chronic pain in the wrist extending to the shoulders and spine. She expressed concern that future work may cause her condition to worsen. Respondent Ali presented medical records but did not call any doctors to testify, and none of the records indicated any other physicians had found her substantially incapacitated from the performance of her usual duties as an FTB Technician.

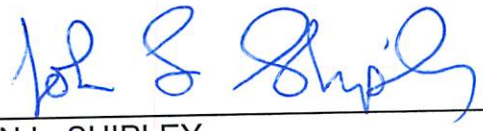
The ALJ considered all the evidence, and credited as persuasive the reports and testimony of Doctors Anderson and Khasigian regarding Respondent Ali's medical conditions and ability to work. The ALJ concluded "when all of the evidence is considered, Dr. Anderson's and Dr. Khasigian's opinions that respondent is not permanently disabled or substantially incapacitated from performance of the duties as a Technician were persuasive." The ALJ further held that Respondent Ali presented no competent medical evidence to support her appeal.

Respondent Ali fails to provide a valid reason for her Petition for Reconsideration. Respondent Ali disagrees with the ALJ's findings of fact and legal analysis, but it is clear from the Proposed Decision that evidence was taken on the underlying facts, medical evidence, and Respondent Ali's claimed disability. Exhibits from both parties were submitted for consideration by the ALJ. The ALJ simply found against Respondent Ali. Respondent Ali has not raised any new evidence or change in circumstances which would warrant reconsideration.

Staff argues the Board deny the Petition for Reconsideration and uphold its decision.

Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. Respondent Ali may file a writ petition in superior court seeking to overturn the decision of the Board.

May 18, 2016



JOHN L. SHIPLEY
Senior Staff Attorney