

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Nasrin Pedarsani (Respondent Pedarsani) worked as a preschool teacher assistant for Respondent Newport Mesa Unified School District (Respondent District). By virtue of her employment, Respondent Pedarsani was a state miscellaneous member of CalPERS.

Respondent Pedarsani applied for disability retirement with CalPERS on the basis of orthopedic conditions (neck, right hip, shoulder, left knee), which she claimed made her unable to work as a preschool teacher assistant for Respondent District. Respondent Pedarsani's alleged neck and hip injuries occurred during a workplace incident on January 10, 2008. Respondent Pedarsani attributed her other injuries to motor vehicle accidents in 2007 and 1994, as well as arthritis.

To evaluate Respondent Pedarsani's disability retirement application, CalPERS referred Respondent Pedarsani for an Independent Medical Examination (IME) with Doctor Richard Claveria. Dr. Claveria issued a written report finding Respondent Pedarsani was not, in his opinion, unable to perform the duties of a preschool teacher assistant for Respondent District. On the basis of this IME report, and a review of Respondent Pedarsani's medical records and job duty statements, CalPERS denied Respondent Pedarsani's disability retirement application.

Respondent Pedarsani appealed CalPERS' determination, exercising her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. The ALJ presided over a one-day hearing in Orange, California on February 16, 2016. Counsel appeared on behalf of CalPERS. Respondent Pedarsani represented herself. Respondent District did not appear.

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

Pursuant to the California Public Employees' Retirement Law (PERL), a CalPERS member who is incapacitated from the performance of his or her duties shall be retired for disability. (Cal. Gov. Code §21150(a).) The statute has been interpreted and applied to require a showing of substantial inability to perform the usual duties of the job. (See, e.g., *Mansperger v. Public Employees Retirement System* (1970) 6 Cal.App.3d 873, 876.) On-the-job discomfort does not qualify a member for disability retirement; risk of further or future injury is similarly insufficient. (*Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 862-64.) On appeal, it is the member's burden to prove substantial incapacity. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.)

At hearing, CalPERS presented the oral testimony and written IME report of Dr. Claveria. Dr. Claveria testified that he interviewed Respondent Pedarsani, obtained a personal and medical history, physically examined Respondent Pedarsani and reviewed her medical and work records.

During examination, Respondent Pedarsani told Dr. Claveria that her chief complaints were neck pain and bilateral knee pain. Respondent Pedarsani had a generally normal physical examination, with some tenderness in the complained-of areas and mildly reduced range of motion, but no abnormal findings. Dr. Claveria ordered x-rays to confirm his diagnoses. The films were normal except for showing arthritic changes in the knees.

As a preschool teacher assistant for Respondent District, most of Respondent Pedarsani's work involved supervising children. Physically, the assistant job required frequent walking, and the ability to regularly lift up to 10 pounds. The job also required frequent bending and twisting of the neck. Infrequently, Respondent Pedarsani was required to lift up to 25 pounds with assistance.

On the basis of his examination, and taking into account the physical requirements of the job, Dr. Claveria opined that Respondent Pedarsani was not substantially incapacitated. Dr. Claveria did not dispute that Respondent Pedarsani experienced pain, but did not feel her subjective complaints of pain prevented her from performing the usual and customary duties of a preschool teacher assistant.

At hearing, Respondent Pedarsani provided additional medical records and testified to the reasons why she felt she could not perform the usual and customary duties of a preschool teacher assistant. She did not call a doctor to testify on her behalf. Dr. Claveria considered the additional information offered by Respondent Pedarsani, and remained of the opinion that Respondent Pedarsani was not disabled.

The ALJ considered all the evidence, and credited as persuasive the report and testimony of Dr. Claveria. The ALJ found Dr. Claveria to be objective and compassionate, crediting his thorough physical evaluation and confirmation of his findings by referring Respondent Pedarsani for x-rays. The ALJ concluded that Respondent Pedarsani'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.

May 18, 2016



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for