

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Tuolumne County Schools employed Candice R. Bailey (Respondent Bailey) as a Human Resources Technician. By virtue of her employment, Respondent Bailey is a local miscellaneous member of CalPERS and subject to Government Code section 21150.

Respondent Bailey filed an application for service pending disability retirement, claiming disability on the basis of an internal condition (Crohn's disease). CalPERS reviewed the written descriptions of Respondent Bailey's job duties and relevant medical reports submitted by Respondent Bailey. CalPERS also arranged for Respondent Bailey to be examined by an Independent Medical Examiner, Dr. Michael Bronshvag, who found that Respondent Bailey was not substantially incapacitated from the usual and customary duties of a Human Resources Technician.

After reviewing Dr. Bronshvag's reports and other medical evidence, CalPERS staff denied Respondent Bailey's application for disability retirement. Respondent Bailey appealed CalPERS' determination, and a hearing was held on March 1, 2016.

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

To be eligible for disability retirement, competent medical evidence must demonstrate the member is substantially incapacitated from performing the usual and customary duties of the position. Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), Respondent Bailey has the burden of showing that she is substantially incapacitated from performing the usual and customary duties in her position as a Human Resources Technician.

The Administrative Law Judge (ALJ) concluded that Respondent Bailey met her burden and the appeal should be granted based on the evidence demonstrating that at least two specialists in gastroenterology have diagnosed Respondent Bailey with Crohn's disease. Respondent Bailey's primary care physician diagnosed her with this condition and referred her to specialists for treatment of this condition. CalPERS' expert, Dr. Bronshvag, confirmed that Respondent Bailey is being provided treatment very specific to Crohn's disease. Dr. Bronshvag has not ruled Crohn's disease out as a possible diagnosis. Dr. Bronshvag agrees that it is not unreasonable to characterize Respondent Bailey's present condition as permanent.

The ALJ concluded that for all the above reasons, Respondent Bailey has demonstrated through competent medical evidence that she is permanently disabled and incapacitated from performance of her duties as a Human Resources Technician with the Tuolumne County Schools.

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. It is doubtful that Respondent Bailey will file a writ in Superior Court, as she prevailed.

May 18, 2016


ELIZABETH YELLAND
Senior Staff Counsel