

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent John Buttram (Respondent Buttram) applied for service pending disability retirement on September 16, 2013, on the basis of an internal (fatigue, sleepiness, sleep apnea) condition. By virtue of his employment as an Equipment Operator II for Respondent Department of Transportation District 02, Respondent Buttram was a state miscellaneous member of CalPERS.

As part of CalPERS review of his medical condition, Respondent Buttram was sent for an Independent Medical Examination (IME) to Sophie Cole, M.D. Dr. Cole is board certified in Internal Medicine. Dr. Cole interviewed Respondent Buttram and obtained a summary of his medical history, reviewed Respondent Buttram's medical records, and performed a physical examination.

Dr. Cole prepared a report and testified at the hearing. Dr. Cole determined that Respondent Buttram was not substantially incapacitated for the performance of his usual job duties. She supported her opinion, in part, by noting that Respondent Buttram exhibited no signs of hypersomnolence during the examination and that his lung and oxygen examinations were normal, as well as his gait, motor strength, and sensory examinations. Dr. Cole further noted that Respondent Buttram exhibited no physical or cognitive impairment and that he was able to perform home maintenance repairs without assistance.

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

Despite proper service and notice being given to Respondent Buttram, he did not appear at the hearing and the Administrative Law Judge (ALJ) proceeded with the matter as a default hearing pursuant to Government Code section 11520. Respondent Buttram was unable to meet his burden of presenting competent medical evidence to establish that he is permanently and substantially incapacitated for the performance of his usual job duties.

The ALJ concluded that Respondent Buttram'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.

May 18, 2016



CHRISTOPHER PHILLIPS
Senior Staff Attorney