

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Karen K. Parker (Respondent Parker) worked as a Rehabilitation Therapist (Therapist) for Respondent California Department of Mental Health, Napa State Hospital (Respondent CDMH). By virtue of her employment, she was a state miscellaneous member of CalPERS.

Respondent Parker applied for industrial disability retirement with CalPERS on the basis of an orthopedic condition (left shoulder), which she claimed made her unable to work as a Therapist with Respondent CDMH.

To evaluate Respondent Parker's industrial disability retirement application, CalPERS referred Respondent Parker for an Independent Medical Examination (IME) with orthopedic surgeon Joseph B. Serra, M.D. Dr. Serra interviewed Respondent Parker, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Serra also performed a comprehensive IME. Dr. Serra issued a written report finding Respondent Parker was not, in his opinion, unable to perform her duties as a Therapist with Respondent CDMH. On the basis of this IME report and a review of Respondent Parker's medical records, CalPERS denied Respondent Parker's industrial disability retirement application.

Respondent Parker 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 Sacramento, California on March 28, 2016. Counsel appeared on behalf of CalPERS. Respondent Parker was represented at the hearing by attorney Adam Blair Corren. Respondent CDMH did not appear at the hearing.

At the hearing, Dr. Serra testified in a manner consistent with his examination of Respondent Parker and the report prepared after the IME. Dr. Serra's medical opinion is that there are no specific job duties Respondent Parker is unable to perform; therefore, Respondent Parker is not substantially incapacitated.

Respondent Parker testified on her own behalf. Respondent Parker testified that she was unable to perform one specific task as a Therapist: management of assaultive behavior (MAB). Respondent Parker testified that she stopped working for Respondent CDMH as a result of her inability to perform MAB. Respondent Parker testified that she is currently working as a Therapist at St. Joseph's Medical Center; however, she testified that she is not required to perform MAB in her current position.

Respondent Parker also called Dr. Robert McIvor to testify on her behalf. Dr. McIvor testified that he did not believe Respondent Parker could perform MAB or the other duties of a Therapist. The ALJ found Dr. McIvor's opinion was not supported by the evidence. First, Dr. McIvor did not review Respondent Parker's job duties or physical requirements prior to rendering his opinion. Second, Dr. McIvor's opinions were not supported by objective medical findings. Dr. McIvor acknowledged during his testimony that there is no objective medical proof to support Respondent Parker's subjective complaint that her left shoulder is less stable. Third, Dr. McIvor did not

evaluate Respondent Parker using the CalPERS standard for disability. Dr. McIvor evaluated Respondent Parker utilizing the workers' compensation standard for disability.

The ALJ denied Respondent Parker's appeal. The ALJ found that Respondent Parker bears the burden to prove by a preponderance of evidence (based on competent medical evidence) that her orthopedic condition renders her unable to perform her usual job duties as a Therapist. The ALJ found that Respondent Parker failed to carry her burden of proof.

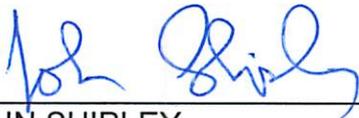
The ALJ concluded that Respondent Parker is not permanently and substantially disabled or incapacitated from the performance of her job duties, and therefore, is not entitled to industrial disability retirement.

The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Pursuant to Government Code section 11517(c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid confusion, staff recommends that the name of the attorney representing CalPERS at the hearing be changed from "John Mikita, Senior Staff Attorney" to "John Shipley, Senior Staff Attorney" on page one of 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.

June 15, 2016



JOHN SHIPLEY
Senior Staff Attorney