

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Patricia A. Anderson (Respondent Anderson) worked as a Lecturer for Respondent California State University at San Marcos (Respondent University). By virtue of her employment, Respondent Anderson was a state miscellaneous member of CalPERS.

Respondent Anderson applied for disability retirement with CalPERS on the basis of intracranial hypotension, headaches, cognitive disorder, post laminectomy syndrome, and neck and back conditions, which she claimed made her unable to work as a Lecturer for Respondent University. Respondent Anderson's injuries arose from a motor vehicle accident in 2011. To evaluate Respondent Anderson's disability retirement application, CalPERS referred Respondent Anderson for an Independent Medical Examination (IME) with Doctor Vrijesh Tantuwaya, a neurologist. Dr. Tantuwaya issued a written report finding Respondent Anderson was not, in his opinion, unable to perform the duties of a Lecturer for Respondent University. On the basis of the IME report, and a review of Respondent Anderson's medical records and job duty statements, CalPERS denied Respondent Anderson's disability retirement application.

Respondent Anderson 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 March 30, 2016. Counsel appeared on behalf of CalPERS. Respondent Anderson represented herself. Respondent University did not appear.

Prior to the hearing, CalPERS explained the hearing process to Respondent Anderson and the need to support her case with witnesses and documents. CalPERS provided Respondent Anderson with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Anderson'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 report of Dr. Tantuwaya. Dr. Tantuwaya testified that he interviewed Respondent Anderson, obtained a personal

and medical history, physically examined Respondent Anderson and reviewed her work and medical records, including various diagnostic studies.

Respondent Anderson advised Dr. Tantuwaya that her chief complaints were headaches, neck pain and lower back pain, with the headaches begin most severe. Respondent Anderson's medical history, summarized by Dr. Tantuwaya in his report, showed Respondent Anderson had a laminectomy (back surgery) in 1984, was involved in a motor vehicle accident in 1986, underwent a second spinal surgery thereafter, and had a third spinal surgery with lumbar fusion in 1987. Respondent Anderson had a fourth spinal surgery in 1989 when the fusion hardware was removed. Respondent told Dr. Tantuwaya that her headaches went away from 2000 to 2011, but returned after the 2011 vehicle accident, which she claimed resulted in a traumatic brain injury.

Dr. Tantuwaya found no substantial evidence of intracranial hypotension, orthostatic hypotension or meningocele that would explain Respondent Anderson's headaches. He found no evidence of cervical spinal fluid leak, as claimed by Respondent Anderson. Reviewing a 2011 MRI taken after the vehicle accident, Dr. Tantuwaya found evidence of minimal central canal narrowing of the cervical spine, but no other significant findings. In his opinion, the MRI findings were inconsistent with Respondent Anderson's subjective complaints. He did not dispute that Respondent Anderson suffered from headaches, but Dr. Tantuwaya found no objective evidence explaining their existence.

Dr. Tantuwaya reviewed Respondent Anderson's duty statement for the Lecturer position as well as the physical requirements of the position. The lecturer position involved teaching, researching, advising students and evaluating student performance. Dr. Tantuwaya testified that Respondent Anderson was well-oriented during her IME and showed good memory, and cognition, and no weakness or significant pathology that would interfere with her job duties. For these reasons, Dr. Tantuwaya found Respondent Anderson was not substantially incapacitated.

At hearing, Respondent Anderson testified to her criticisms of Dr. Tantuwaya's examination and report, but did not present a physician to testify on her behalf. Respondent Anderson presented letters from her husband and other friends and colleagues describing her condition before and after the 2011 motor vehicle accident. The authors of the letters did not testify at hearing.

The ALJ considered all the evidence and upheld CalPERS' denial of Respondent Anderson's application for disability retirement. The ALJ found Dr. Tantuwaya to be a "credible witness" who testified clearly and concisely, "buttressed by his wealth of knowledge and years of experience as a neurologist." The ALJ further held Respondent Anderson did not meet her burden of presenting competent medical evidence to contradict Dr. Tantuwaya's testimony and report.

The ALJ concluded that Respondent Anderson'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 the 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



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