

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Angelee Martin (respondent Martin) worked as a Receptionist/Health Clerk for respondent Hughson Unified School District (respondent HUSD). By virtue of her employment, she was a local miscellaneous member of CalPERS.

Respondent Martin applied for disability retirement with CalPERS on the basis of orthopedic (neck, right arm and shoulder, and back) conditions, which she claimed made her unable to work as a Receptionist/Health Clerk with respondent HUSD.

To evaluate respondent Martin's disability retirement application, CalPERS referred respondent Martin for an Independent Medical Examination (IME) with orthopedic surgeon Joseph B. Serra, M.D. Dr. Serra interviewed respondent Martin, 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 Martin was not, in his opinion, unable to perform her duties as a Receptionist/Health Clerk with respondent HUSD. On the basis of this IME report and a review of respondent Martin's medical records, CalPERS denied respondent Martin's disability retirement application.

Respondent Martin 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 April 21, 2016. Respondent Martin was represented at the hearing by attorney Patrick J. Kelly. Respondent HUSD did not appear at the hearing.

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

Respondent Martin testified on her own behalf. Respondent Martin testified that she experienced a lot of pain in her neck and right arm while working and, as a result, was often absent from work or left early. She testified that she stopped working altogether in December 2013, because of the pain.

Respondent Martin's husband also testified on her behalf. He testified that since 2013 respondent Martin experienced a lot of pain in her neck, right arm and shoulder, and lower back. He testified that respondent Martin missed a lot of work in 2013 because of the pain. He also testified that because of the pain respondent Martin cannot do much shopping, cooking, yard work, or much of anything else around the house. He believes that respondent Martin is not able to go back to work because of the pain.

Respondent Martin did not call a medical doctor to testify on her behalf. However, respondent Martin did offer as evidence medical records and reports from her treating doctors to support her claim.

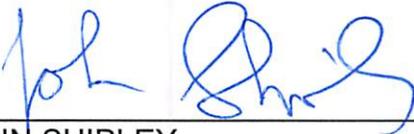
The ALJ denied respondent Martin's appeal. The ALJ found that respondent Martin bears the burden to prove by a preponderance of evidence (based on competent medical evidence) that her orthopedic conditions render her unable to perform her usual job duties as a Receptionist/Health Clerk. The ALJ found that Dr. Serra's IME report and testimony were persuasive that respondent Martin is not permanently disabled or substantially incapacitated from performing her usual duties. The ALJ also found that Dr. Serra's medical opinions were well supported by the medical record, his examination of respondent Martin, his review of respondent Martin's duties and physical requirements, and other medical records provided to him.

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

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

June 15, 2016



JOHN SHIPLEY
Senior Staff Attorney