

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Gloria Rodriguez-Barnes (Respondent) applied for Service Pending Industrial Disability Retirement based on orthopedic condition in both hands (tenosynovitis, cyst, trigger finger and carpal tunnel) caused by working as a dental assistant for California Department of Corrections and Rehabilitation, Valley State Prison (CDCR). On September 25, 2014, CalPERS determined that Respondent was not substantially incapacitated from the performance of her duties as a Dental Assistant for CDCR. Respondent appealed. A hearing was completed on March 3, 2016. Respondent was represented by counsel at the hearing.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to board certified Orthopedic Surgeon Dr. Joseph Serra. Dr. Serra reviewed records including her job descriptions; interviewed Respondent and obtained her chief complaint and histories; and conducted a physical examination. He prepared an IME report, in which he reached diagnostic impressions and answered specific questions.

Dr. Serra concluded that Respondent is not substantially incapacitated from the performance of her usual duties, and believes that returning to work would be therapeutic for her right hand. He also opined that she exaggerated her complaints to a significant degree. At the hearing, Dr. Serra testified to his examination, findings and report. Dr. Serra's medical opinion is that Respondent is not substantially incapacitated to perform the duties of Dental Assistant.

At the hearing, Respondent called Orthopedic Surgeon Dr. Hiram Morgan to testify on her behalf. Dr. Morgan does not believe that Respondent is able to perform the tasks required of a Dental Assistant. He testified that he cannot specify dates that Respondent became disabled. Respondent also offered medical reports from other doctors who did not testify at the hearing. All her medical reports were admitted as hearsay.

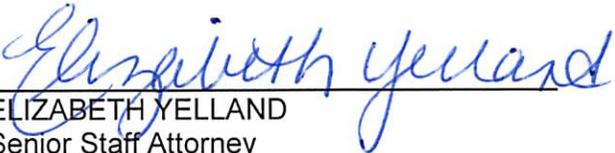
The Administrative Law Judge (ALJ) found that Respondent bears the burden to show by a preponderance of the evidence (based on competent medical evidence) that she is substantially incapacitated for the performance of her usual job duties. He concluded that she did not meet her burden of showing that, at the time of her application, on the basis of physical condition, she was substantially incapacitated.

The ALJ opined that this case turns on the sufficiency of Respondent's medical evidence more than any question of credibility of the doctors. The ALJ held that Respondent's medical evidence is insufficient for two reasons. First, Dr. Morgan's examination is remote in time from Respondent's application for Industrial Disability Retirement. It was not established that Dr. Morgan's observations and conclusions reflect Respondent's condition at the time of her application for Industrial Disability Retirement. The same is true of all other medical reports submitted by Respondent. Second, the reports submitted by Respondent were all prepared in the context of a workers' compensation matter. The standard of disability in a workers' compensation matter is not the same as in CalPERS disability matters. Because of the insufficiency of competent medical evidence, Respondent failed to meet her burden of proof.

The ALJ concluded that Respondent'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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

August 17, 2016.


ELIZABETH YELLAND
Senior Staff Attorney