

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Sandra K. McPherson (Respondent McPherson) applied for service pending disability retirement on February 5, 2014. The disabilities claimed by Respondent McPherson were orthopedic (osteoarthritis, knees, carpal tunnel and ulnar nerve) and rheumatologic (fibromyalgia) conditions. By virtue of her employment as a para-educator with Respondent Los Angeles County Office of Education (LACOE), Respondent McPherson was a local miscellaneous member of CalPERS. LACOE did not participate in Respondent McPherson's appeal.

Respondent McPherson retired for service on June 10, 2014, and has been receiving service retirement allowance since that time.

As part of CalPERS' review of her medical conditions, Respondent McPherson was examined by two Independent Medical Examiners (IME). Dr. Steven Silbart, a board-certified Orthopedic Surgeon, examined Respondent McPherson on October 20, 2014, authored an IME report, and testified at the hearing. Dr. Nazanin Firooz, board-certified in Rheumatology and Internal Medicine, examined Respondent McPherson on December 10, 2014, and authored an IME report.

After reviewing Respondent McPherson's job description and all relevant medical records, and taking an oral history and performing a physical examination, Dr. Silbart made two diagnoses in his report: Bilateral carpal tunnel syndrome, right cubital tunnel syndrome secondary to trauma sustained continuously; and, seronegative inflammatory arthritis affecting bilateral hands and bilateral knees. Notwithstanding the diagnoses, Dr. Silbart found that there were no specific job duties that Respondent McPherson could not perform, and he noted she had performed her typical duties right up until she retired for service.

After reviewing Respondent McPherson's job description and all relevant medical records, and taking an oral history and performing a physical examination, Dr. Firooz found that Respondent McPherson suffers from Fibromyalgia, but not from rheumatoid arthritis. Dr. Firooz concluded that the symptoms of Fibromyalgia were not severe at the time of the exam and did not substantially incapacitate Respondent McPherson.

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

Despite proper notice being given by CalPERS and by the Office of Administrative Hearings, Respondent McPherson did not appear at the hearing. Oral and documentary evidence was put on the record by CalPERS.

The Administrative Law Judge (ALJ) found that Respondent McPherson did not carry her burden of proving she is substantially incapacitated from the performance of her usual duties. The ALJ further found that the two IME physicians were credible, especially Dr. Silbart, given his over 30 years of experience.

The ALJ concluded that Respondent McPherson'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.

August 17, 2016



CHRISTOPHER PHILLIPS
Senior Staff Attorney