

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Robin L. Adams (respondent Adams) worked as a Management Services Technician (MST) for respondent California Department of General Services (respondent DGS). By virtue of her employment, she was a state miscellaneous member of CalPERS.

Respondent Adams applied for disability retirement with CalPERS on the basis of an orthopedic condition (degenerative disc disease) and psychological conditions (anxiety, depression and memory loss), which she claimed made her unable to work as an MST with respondent DGS.

To evaluate respondent Adams' disability retirement application, CalPERS referred respondent Adams for an Independent Medical Examination (IME) with board certified Orthopedic Surgeon Harry Khasigian, M.D., as well as Psychiatrist Herbert Perliss, M.D.

Dr. Khasigian interviewed respondent Adams, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Khasigian also performed a comprehensive IME. Dr. Khasigian issued a written report finding respondent Adams was not, in his opinion, unable to perform her usual duties as an MST with respondent DGS on the basis of any orthopedic conditions.

Dr. Perliss also interviewed respondent Adams, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Perliss also performed a comprehensive IME. Dr. Perliss opined that while respondent Adams does have a psychiatric disorder, it does not appreciably interfere with her ability to perform the essential functions of her job as an MST with respondent DGS. Dr. Perliss opined that respondent Adams is not substantially incapacitated to perform her job duties as an MST.

On the basis of these IME reports and a review of respondent Adams' medical records, CalPERS denied respondent Adams' disability retirement application.

Respondent Adams 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 May 10, 2016. Counsel appeared on behalf of CalPERS. Respondent Adams represented herself at the hearing. Respondent DGS did not appear at the hearing.

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

Prior to the hearing, CalPERS and respondent Adams agreed that all medical records and reports would be admitted as direct evidence.

CalPERS submitted the reports of Drs. Khasigian and Perliss. As described above, each of these doctors concluded that there are no specific job duties respondent Adams is unable to perform; therefore, respondent Adams is not substantially incapacitated from performing her usual and customary duties.

In addition, Dr. Khasigian testified at the hearing in a manner consistent with his examination of respondent Adams and the report prepared after the IME. Dr. Khasigian's medical opinion is that respondent Adams is not substantially incapacitated from performing her usual duties as an MST.

Respondent Adams testified on her own behalf. Respondent Adams testified that her physical and psychological conditions are exacerbated with work and render her substantially incapacitated from performing her usual duties as an MST. Respondent Adams testified that despite her best efforts, she continues to experience pain and anxiety and is unable to perform her duties as an MST. Respondent Adams offered as evidence a substantial volume of medical records and reports from her treating doctors to support her claim.

Respondent Adams' daughter also testified on her behalf. Respondent Adams' daughter testified that her mother's pain has progressively gotten worse over the years, and that her mother would come home every day from working crying due to stress, pain and anxiety.

The ALJ denied respondent Adams' appeal. The ALJ found that respondent Adams bears the burden to prove by a preponderance of evidence (based on competent medical evidence) that medical conditions render her unable to perform her usual job duties as an MST. The ALJ found that respondent Adams "testified convincingly that she continues to experience pain and anxiety. However, the medical evidence she provided was less persuasive than the opinions provided by the CalPERS IMEs Drs. Perliss and Khasigian on the question of whether respondent Adams is substantially incapacitated from performing the duties of a Management Services Technician."

The ALJ concluded that respondent Adams "did not demonstrate that she is substantially incapacitated from performing the duties of a Management Services Technician."

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



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