

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Bertha Smith (Respondent) applied for service pending disability retirement on October 14, 2014, based on an orthopedic condition (left hand and wrist). She retired on October 31, 2014, and has been receiving service retirement since that date. At the time of her application, Respondent was employed as a Food Service Technician I (Food Tech) for California Department of State Hospitals, Metropolitan LA (Hospital). On April 27, 2015, CalPERS determined that Respondent was not substantially incapacitated from the performance of her duties as a Food Tech for the Hospital. Respondent appealed. A hearing was completed on June 30, 2016.

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

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to board certified Orthopedic Surgeon Dr. John Kaufman. Dr. Kaufman reviewed medical records, job descriptions, medical history, and completed a physical examination. Dr. Kaufman opined that Respondent had no orthopedic disability, and that she was not substantially incapacitated to perform her usual job duties as a Food Tech for the Hospital. Dr. Kaufman noted that Respondent had full range of motion of her left hand and wrist, with no swelling or deformity. All test results were within normal limits. There was no atrophy found on measurement. Dr. Kaufman opined that, "Although [Respondent] may have some difficulty with power grasping with her left hand, she is able to perform the essential functions of her actual and present job duties."

Dr. Kaufman's findings and observations were supported by the findings of Orthopedic Surgeon Dr. Gregg Sobeck, whose Agreed Medical Evaluation (AME) Report Respondent submitted as evidence. Dr. Sobeck wrote that Respondent's range of motion and grip strength was normal and the same in both hands.

At the hearing, Respondent testified on her own behalf. She did not call any medical professionals or other witnesses to testify.

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. The ALJ concluded that the totality of the evidence did not establish that Respondent's medical condition in her left hand and wrist rendered her substantially unable to perform her usual duties. Respondent did not meet her burden of showing that at the time of her application, on the basis of her claimed physical disorders, she was substantially incapacitated.

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
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