

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Cari J. McCormick (Respondent McCormick) worked as an Appraiser III for Respondent County of Lake (Respondent Lake). By virtue of her employment, she was a local miscellaneous member of CalPERS.

Respondent McCormick applied for disability retirement (DR) with CalPERS on the basis of an internal (respiratory, systemic health problems) condition, which she claimed made her unable to work as an Appraiser III with Respondent Lake.

To evaluate Respondent McCormick's DR application, CalPERS referred Respondent McCormick for an Independent Medical Examination (IME) with Soheila Benrazavi, M.D. Dr. Benrazavi interviewed Respondent McCormick, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Benrazavi also performed a comprehensive IME. Dr. Benrazavi issued a written report finding Respondent McCormick was not, in Dr. Benrazavi's opinion, unable to perform the duties of an Appraiser III with Respondent Lake. Dr. Benrazavi did believe that there were environmental factors causing Respondent McCormick's symptoms, and recommended that her workplace be tested for certain contaminants and/or she be relocated to another building. Dr. Benrazavi was provided additional documentation and provided two supplemental reports. In Dr. Benrazavi's supplemental reports, she concluded that Respondent McCormick should return to work at her place of business on a trial basis to determine if she is capable of working there. On the basis of the IME report, the supplemental IME reports, and a review of Respondent McCormick's medical records, CalPERS denied Respondent McCormick's DR application.

Respondent McCormick 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 June 8, 2016. Closing briefs were submitted by CalPERS and Respondent McCormick on June 24, 2016. Respondent McCormick was represented at the hearing by attorney Benjamin K. Karpilow. Respondent Lake did not appear at the hearing.

At the hearing, Dr. Benrazavi testified in a manner consistent with her examination of Respondent McCormick and the IME report and supplemental IME reports prepared after the IME. Dr. Benrazavi's medical opinion is that there are no specific job duties Respondent McCormick is unable to perform; therefore, Respondent McCormick is not substantially incapacitated.

Respondent McCormick testified on her own behalf. Respondent McCormick testified that she experienced a lot of fatigue and flu-like symptoms starting in 2010 and worsening through 2012. She testified that Respondent Lake did not offer to accommodate her by moving her to a work location outside the Courthouse that was her primary place of employment. She testified that she eventually used up all of her medical leave, and that in May 2013 Respondent Lake terminated her employment.

Respondent McCormick also called Massoud Mahmoudi, D.O., Ph.D. to testify on her behalf. Dr. Mahmoudi examined Respondent McCormick and prepared two reports. Dr. Mahmoudi's physical examination of Respondent McCormick showed normal results. Dr. Mahmoudi's opinion is that Respondent McCormick becomes symptomatic when working at her place of employment. Dr. Mahmoudi opined that that she could not perform her job duties at her place of employment, but that she could perform those duties at another location. Dr. Mahmoudi concluded that Respondent McCormick does not have a permanent impairment; however, she is temporarily partially disabled if she has to work at her place of employment.

The ALJ denied Respondent McCormick's appeal. The ALJ found that Respondent McCormick bears the burden to prove by a preponderance of evidence (based on competent medical evidence) that her internal condition renders her unable to perform her usual job duties as an Appraiser III. The ALJ found that when "all the competent medical evidence is considered, Dr. Benrazavi and Dr. Mahmoudi's opinions were in agreement that respondent [McCormick] was not permanently disabled or substantially incapacitated from performing her usual duties as an Appraiser III for the County [Respondent Lake] on the basis of her internal condition...." The ALJ concluded that California case law does not support Respondent McCormick's contention that she is entitled to DR benefits because she was substantially incapacitated from performing her duties at her place of employment, and Respondent Lake would not accommodate her to work at a different location.

The ALJ concluded that Respondent McCormick 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

September 21, 2016



JOHN SHIPLEY
Senior Staff Attorney