

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Nicole Collins (Respondent Collins) was employed by the Sacramento Metropolitan Fire District as an Accounting Technician and is a miscellaneous member of CalPERS.

Respondent Collins submitted an application for industrial disability retirement on the basis of orthopedic (upper extremities, back, and neck) conditions.

CalPERS reviewed written descriptions of Respondent Collins's job duties and relevant medical reports submitted by Respondent Collins. CalPERS also sent Respondent Collins for an Independent Medical Examination with Orthopedic Surgeon Harry Khasigian, M.D. Based on relevant medical evidence, CalPERS determined Respondent Collins was not substantially incapacitated from performance of her duties as an Accounting Technician at the time her application for industrial disability retirement was filed.

Respondent Collins appealed CalPERS' determination and a hearing as to whether Respondent Collins is substantially incapacitated from performing her usual and customary job duties was held on July 5, 2016.

To be eligible for industrial disability retirement, competent medical evidence must demonstrate the member is substantially incapacitated from performing the usual and customary duties of her position. Furthermore, the injury and condition that is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

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

Respondent Collins did not appear at the hearing and was not represented by counsel.

Dr. Khasigian testified regarding his examination of Respondent Collins and the diagnosis. Dr. Khasigian opined that Respondent Collins was not restricted from performing any job functions from an orthopedic point of view.

The Administrative Law Judge (ALJ) concluded that Respondent Collins' appeal should be denied because Respondent Collins did not provide competent medical evidence demonstrating she has a disability of permanent or extended duration. 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.

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



PREET KAUR
Senior Staff Attorney