

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Valerie Carter (Respondent) was employed by Respondent Employment Development Department (EDD) as a Staff Services Analyst (SSA). By virtue of her employment, Respondent was a state miscellaneous member of CalPERS.

Respondent submitted an application for disability retirement on the basis of claimed rheumatologic (Lupus and fibromyalgia) and orthopedic (cervical disc disease) conditions. Staff reviewed relevant medical reports regarding Respondent's condition and reviewed a written job description regarding Respondent's SSA position. Joseph Serra, M.D., a board-certified Orthopedic surgeon and Douglas Haselwood, M.D., a board-certified Rheumatologist, reviewed relevant medical reports and performed independent medical examinations of Respondent. In their written reports, Doctors Serra and Haselwood noted their respective observations, findings, and conclusions regarding their examinations of Respondent. Both Dr. Serra and Dr. Haselwood offered opinions that Respondent was not substantially incapacitated from performing the usual and customary duties of an SSA for EDD. CalPERS staff (Staff) denied Respondent's application for disability retirement. Respondent appealed Staff's determination and a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH) was held on July 14, 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 clarified how to obtain further information on the process.

In order to be eligible for disability retirement, competent medical evidence must demonstrate that the individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the claimed basis for the disability must be permanent or of an extended and uncertain duration.

At the hearing the ALJ received, reviewed, and considered evidence demonstrating that CalPERS provided both Respondent and EDD with proper and adequate notice of the date, time, and place of the hearing. Neither the Respondent nor a representative of EDD appeared at the hearing. Accordingly, the ALJ found and ruled that the matter could proceed as a default as against both Respondent and EDD, pursuant to Government Code section 11520.

The ALJ reviewed and considered a written description of Respondent's usual and customary job duties as an SSA for EDD. Additionally, the ALJ noted that Respondent had described her job to Dr. Haselwood as being "sedentary".

The ALJ reviewed the written report prepared by Dr. Serra and the testimony Dr. Serra provided at the hearing. The ALJ noted that Respondent told Dr. Serra, during his examination of her, that she continued to work full-time as an SSA at EDD and that she

sometimes worked as much as 70 hours per week. The ALJ found that Dr. Serra felt that Respondent had evidence of age appropriate degenerative disc disease in her cervical spine. Nonetheless, Dr. Serra found no evidence of spasms or a bulging disc with nerve root impingement in Respondent's cervical spine. In his initial report, Dr. Serra wrote that it would be "very difficult" for Respondent to sit at a computer screen. When asked by Staff to clarify his conclusions and/or opinion, Dr. Serra stated in a Supplemental Report that "there are no specific job duties that [Respondent] would be unable to perform."

The ALJ received into evidence, reviewed, and considered the written report prepared by Dr. Haselwood. The ALJ summarized Dr. Haselwood's findings as follows:

With the exception of some relatively minor and age-appropriate osteoarthritic changes, Dr. Haselwood found [Respondent's] joint examination to be unremarkable in terms of joint tenderness or evidence of chronic or active synovitis. He described her complaints of pain, withdrawal, and guarding mechanisms throughout the examination as 'inconsistent and nonphysiologic'.
(See Factual Finding No. 16.)

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 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.

September 21, 2016



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Senior Staff Attorney