

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Herminia I. Arras (Respondent Arras) applied for disability retirement on the basis of orthopedic (neck, back and right leg, foot and ankle) conditions. By virtue of her employment as a school bus driver for Respondent Lake Elsinore Unified School District (LEUSD), she was a local miscellaneous member of CalPERS.

As part of CalPERS' review of her medical condition, Respondent Arras was sent for an Independent Medical Examination (IME) by orthopedic surgeon James Fait, M.D. Dr. Fait interviewed Respondent Arras, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Fait also performed a comprehensive IME. Dr. Fait opined that Respondent Arras is not substantially incapacitated to perform her job duties as a school bus driver. After reviewing all medical documentation and the IME report, CalPERS determined that Respondent Arras was not disabled.

Respondent Arras 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 San Bernardino, California on July 26, 2016. Respondent Arras represented herself at the hearing. Respondent LEUSD did not appear.

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

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

Respondent Arras testified on her own behalf. She did not call any physicians or other medical professionals to testify. Respondent Arras submitted certain medical reports to support her claim. Respondent Arras testified that she was informed by LEUSD that due to certain work restrictions she was no longer able to perform her job as a school bus driver. Respondent Arras testified that in June 2014, she had a meeting with staff from LEUSD and was informed at this meeting that she could retire, take another fitness for duty examination, or take a part-time position as a crossing guard. Respondent Arras testified that she chose to retire because she felt she had no other choice.

Respondent Arras' husband also testified on her behalf. Mr. Arras testified that Respondent Arras is limited in what she is physically capable of doing, and gets tired and fatigued and has pain and spasms when partaking in physical activities. Mr. Arras was at the June 2014, meeting between Respondent Arras and staff from LEUSD, and corroborated Respondent Arras' testimony as to what transpired at the meeting.

The ALJ denied Respondent Arras' appeal. The ALJ found that Respondent Arras bears the burden to prove by a preponderance of evidence (based on competent medical evidence) that her orthopedic condition renders her unable to perform her usual job duties. The ALJ found Respondent Arras and Mr. Arras were credible and sincere witnesses; however, the ALJ found that Respondent Arras failed to carry her burden of proof.

The ALJ concluded that Respondent Arras 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.

Pursuant to Government Code section 11517(c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends that the word "industrial" be deleted before the words "disability retirement" in the caption on page one, and on pages two, eight, nine and ten of 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