

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Respondent Linda C. Martinez (Respondent Martinez) was employed as a Disability Evaluation Analyst by the Department of Social Services (Department). As such, Respondent was a state miscellaneous member of CalPERS.

On January 8, 2014, the Department served Respondent with a Notice of Adverse Action (NOAA) seeking to terminate her employment effective January 17, 2014. The NOAA was based on Respondent's incompetence; inefficiency; inexcusable neglect of duty; insubordination; dishonesty; discourteous treatment of the public and other employees; willful disobedience; misuse of state property; violation of prohibitions in accordance with section 19990; and other failure of good behavior; and unlawful retaliation.

Respondent appealed the NOAA to the State Personnel Board (SPB), and on September 22, 2014, she entered into a Settlement Agreement with the Department. Respondent did not cite disability as a ground for appeal of the NOAA. Under the terms of the Settlement Agreement, Respondent agreed to resign from her position with the Department and, "never again apply for or accept any employment position" with the Department. The Settlement Agreement also included the following clauses: that Respondent "will be deemed to be on unpaid leave of absence from ... January 17, 2014 through ... August 31, 2014" and "on unpaid medical leave of absence from ... September 1, 2014 through ... September 30, 2014" and that the Department "agrees to cooperate with any application for disability retirement filed by [Respondent] within the next six months."

On November 17, 2014, Respondent submitted an application for disability retirement citing her "bilateral arms and neck, endometriosis, severe GERD vocal cord damage, DM2, anxiety cumulative trauma" conditions.

CalPERS reviewed information concerning Respondent's separation from employment, including the NOAA and the Settlement Agreement and determined she was not eligible to apply for disability retirement because she was terminated for cause, and her termination was neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement.

CalPERS notified Respondent of its determination on June 22, 2015. Respondent appealed, and the matter went to hearing on July 27, 2016, before an Administrative Law Judge (ALJ).

At the hearing, CalPERS presented the testimony of the Department's Labor Relations Manager regarding the NOAA and Settlement Agreement. This testimony established the evidence presented by CalPERS was not refuted.

Respondent was represented by counsel at the hearing.


Respondent testified at the hearing that she was not terminated for cause but voluntarily resigned from her employment with the Department pursuant to the terms of the Settlement Agreement.

The ALJ determined that the basis of Respondent's separation from the Department was the original action terminating her from her position as a Disability Evaluation Analyst. But for the termination, there would have been no settlement. The ALJ found no evidence that a medical condition caused or led to Respondent's termination or that the Department terminated her to prevent her from retiring for disability.

The ALJ concluded that CalPERS' decision to cancel Respondent's November 17, 2014, application for disability retirement was correct and 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.

November 16, 2016

  
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AUSTA WAKILY  
Senior Staff Attorney