

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Ryann O. Mullen (Respondent Mullen) worked as a Correctional Case Records Analyst for Respondent California Department of Corrections and Rehabilitation, Wasco State Prison (CDCR). By virtue of her employment, she was a state miscellaneous member of CalPERS.

Respondent Mullen submitted a disability retirement application with CalPERS on March 11, 2013, claiming that on the basis of orthopedic (right upper extremity, upper back, neck and headaches, carpal tunnel syndrome, right/hand wrist, bulging disc in the cervical region C3/4, severe tendinitis in the right shoulder, chronic pain in the neck and right shoulder with radiating pain in the upper back, and migraine headaches) condition she was unable to work as a Correctional Case Records Analyst with CDCR. Respondent Mullen's disability retirement application was approved and she was retired for disability effective December 13, 2012.

Pursuant to Government Code section 21192, CalPERS sought to have Respondent Mullen examined to determine whether she should be reinstated to her former position with CDCR. To evaluate Respondent Mullen's current medical condition, CalPERS referred Respondent Mullen for an Independent Medical Examination (IME) with orthopedic surgeon Ghol Ha'Eri, M.D. Dr. Ha'Eri interviewed Respondent Mullen, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Ha'Eri also performed a comprehensive IME. Dr. Ha'Eri issued a written report finding Respondent Mullen was not, in his opinion, unable to perform her duties as a Correctional Case Records Analyst with CDCR. On the basis of this IME report and a review of Respondent Mullen's medical records, CalPERS determined that Respondent Mullen was no longer substantially incapacitated and should be reinstated to her position with CDCR.

Respondent Mullen 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 Fresno, California on August 9, 2016. Respondent Mullen represented herself at the hearing. CDCR did not appear at the hearing.

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

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

Respondent Mullen testified on her own behalf. Respondent Mullen testified that she is currently working as a Judicial Courtroom Assistant for the Superior Court of California, County of Kern (Kern County Superior Court). Prior to working as a Judicial Courtroom Assistant, she worked as a Collections Specialist for the Kern County Superior Court. Respondent Mullen began working with the Kern County Superior Court in September, 2013.

Respondent Mullen also testified that she did not believe she could perform all of the job duties of a Correctional Case Records Analyst. Specifically, she testified that she did not believe she could maneuver files on and off of a 7-foot ladder. She also testified that she did not believe she could transport a box of files by lifting it to put on a cart. Respondent Mullen testified that she was told by Physician's Assistant Kevin Groh, on August 25, 2014, that she could no longer perform the duties of a Correctional Case Records Analyst.

Respondent Mullen did not call any physicians or other medical professionals to testify on her behalf. At Respondent Mullen's request, the ALJ provided her time after the conclusion of the hearing to submit medical records to support her claimed incapacity. Respondent Mullen failed to submit any additional medical records to support her claim.

The ALJ denied Respondent Mullen's appeal. The ALJ found that CalPERS submitted sufficient evidence to meet its burden to establish by a preponderance of evidence (based on competent medical evidence) that Respondent Mullen is no longer substantially incapacitated.

The ALJ found that Dr. Ha'Eri's testimony and opinion that Respondent Mullen is not substantially incapacitated was persuasive. The ALJ found that Dr. Ha'Eri's opinion was "based on his medical experience, training and expertise, examination of respondent, and review of respondent's medical records." The ALJ found that Respondent Mullen did not present competent medical evidence to refute Dr. Ha'Eri's opinion. Consequently, the ALJ granted CalPERS' request that Respondent Mullen be involuntarily reinstated from 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" on pages seven and eight 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

November 16, 2016



JOHN SHIPLEY
Senior Staff Attorney