

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Marilyn Strasburg-Langford (Respondent Strasburg-Langford) applied for disability retirement on the basis of orthopedic (back problems, bulging discs, pinched nerves, intense pain, and occasional numbness) conditions. By virtue of her employment as an Office Technician for Respondent California Department of Corrections and Rehabilitation, California Correctional Center (CDCR), she was a state miscellaneous member of CalPERS.

As part of CalPERS' review of her medical condition, Respondent Strasburg-Langford was sent for an Independent Medical Examination (IME) by Orthopedic Surgeon Robert Henrichsen, M.D. Dr. Henrichsen interviewed Respondent Strasburg-Langford, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Henrichsen also performed a comprehensive IME. Dr. Henrichsen opined that Respondent Strasburg-Langford was substantially incapacitated from performing her job duties as an Office Technician. However, Dr. Henrichsen did not believe the incapacity was permanent or of an extended and uncertain duration. His medical opinion was that the duration of Respondent Strasburg-Langford's incapacity was less than six months. After reviewing all of the medical documentation and the IME report, CalPERS determined that Respondent Strasburg-Langford was not substantially incapacitated from performing her usual duties.

Respondent Strasburg-Langford 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 Sacramento, California on September 8, 2016. Respondent Strasburg-Langford represented herself at the hearing. Respondent CDCR did not appear at the hearing.

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

At the hearing, Dr. Henrichsen testified in a manner consistent with his examination of Respondent Strasburg-Langford and the report prepared after the IME. Dr. Henrichsen's medical opinion is that Respondent Strasburg-Langford suffered from an incapacity that was not permanent or of an extended and uncertain duration. Furthermore, Dr. Henrichsen testified that in his opinion there are no specific job duties Respondent Strasburg-Langford is unable to perform; therefore, Respondent Strasburg-Langford is not substantially incapacitated.

Respondent Strasburg-Langford testified on her own behalf. She did not call any physicians or other medical professionals to testify. Respondent Strasburg-Langford testified that constant sitting and bending made her back pain unbearable, and for this reason she went out on medical leave in February 2011.

Respondent Strasburg-Langford also testified that as a result of her medical condition she is unable to do many physical activities, including the following: sitting on hardwood floor or during long car rides, sitting at a table to play with her kids, doing dishes or laundry for a prolonged time. In addition, Respondent Strasburg-Langford testified that she walks with a limp and has experienced several falls after her leg gives out.

Respondent Strasburg-Langford also submitted numerous medical records from Hal Meadows, M.D., her treating physician. According to Dr. Meadows' medical records, it was his opinion that Respondent Strasburg-Langford was unable to return to work and that her condition had reached maximum improvement. It was Dr. Meadows' opinion that Respondent Strasburg-Langford medical condition was considered to be permanent and stationary.

The ALJ denied Respondent Strasburg-Langford's appeal. The ALJ found that Respondent Strasburg-Langford 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 Strasburg-Langford "may suffer from back pain and that pain may make it more difficult for her to perform her job duties; however, the ALJ found that discomfort by itself is insufficient to establish a substantial incapacity, even if said discomfort makes it difficult to perform one's job duties." The ALJ determined that Respondent Strasburg-Langford failed to carry her burden of proof.

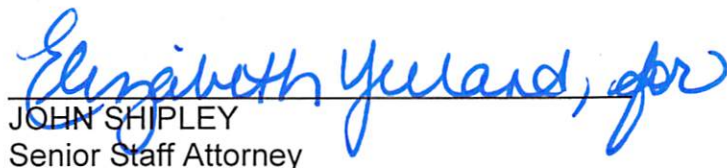
The ALJ concluded that Respondent Strasburg-Langford is not permanently and substantially disabled or incapacitated from the performance of her job duties, and therefore, is not entitled to disability retirement.

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 page two of the Proposed Decision.

The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision as modified above.

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