

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Bertha Chapula-Sanchez (Respondent) applied for disability retirement based on an orthopedic condition (neck, right arm, shoulder, elbow and hand; left trigger finger and lower back) caused by repetitive cumulative trauma; her back injury was the result of being hit with a shovel handle when she was a teenager. Respondent worked for the Employment Development Department (EDD) as a Disability Insurance Program Representative.

On May 13, 2015, Respondent filed for disability retirement. As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination to Board Certified Orthopedic Surgeon Harry Khasigian, M.D. for her orthopedic conditions. Dr. Khasigian interviewed Respondent, obtained a personal and medical history, had Respondent complete a questionnaire, conducted a physical exam, and reviewed Respondent's medical records related to her orthopedic conditions. He also reviewed Respondent's duty statement and physical requirements of her position of Disability Insurance Program Representative.

Dr. Khasigian diagnosed degenerative disc disease of the cervical and lumbar spine, subjective shoulder and elbow pain, carpal tunnel syndrome, left thumb trigger finger, generalized anxiety disorder, undifferentiated somatoform disorder and major depressive disorder. He concluded that Respondent was not substantially incapacitated to perform her usual job duties as a Disability Insurance Program Representative. He found nothing unusual in his examination of Respondent.

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 provided her with information on how to obtain further information on the process.

At hearing, Respondent did not call any health care providers to testify nor did she introduce any medical records, reports or opinions to establish that she was substantially incapacitated for the performance of her duties as a Disability Insurance Program Representative. Respondent stipulated to the admission of Dr. Khasigian's two Independent Medical Examination reports.

The Administrative Law Judge (ALJ) found that Respondent was not substantially incapacitated for the performance of her usual and customary duties as a Disability Insurance Program Representative with EDD. The ALJ further found that Respondent provided no objective, competent medical evidence to support her claim of disability.

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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

December 21, 2016



TERRI L. POPKES
Senior Staff Attorney