

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Terrance Roman (Respondent) was employed by the Department of Industrial Relations (DIR) as a Court Reporter. By virtue of his employment, Respondent was a state miscellaneous member of CalPERS. On January 23, 2012, DIR submitted an application for disability retirement on Respondent's behalf on the basis of a claimed orthopedic (neck, back, shoulder, knees) condition. Staff reviewed relevant medical reports and a written description of Respondent's usual and customary job duties. Brendan McAdams, Jr., M.D., a board-certified Orthopedic Surgeon, reviewed medical reports, a job description and performed an independent medical examination of Respondent. Dr. McAdams prepared a written report which contained his observations, findings, conclusions, and opinion. Dr. McAdams offered his opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of a Court Reporter for DIR. Staff provided both DIR and Respondent with notice of the determination that Respondent was not substantially incapacitated and that the employer-generated application for disability retirement was denied. Respondent Roman appealed Staff's determination and a hearing was held on September 13, 2016.

Respondent retired for service and continues to receive his service retirement benefit.

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

Respondent offered copies of various medical reports into evidence and the reports were considered by the Administrative Law Judge (ALJ) as administrative hearsay. The medical reports demonstrated that Respondent had expressed complaints of low back pain since 2005. In subsequent years, Respondent complained of shoulder, neck, and knee pain. Respondent last worked as a Court Reporter in August, 2010. Respondent did not call a physician to testify on his behalf.

Dr. McAdams testified at the hearing. He testified consistently with the contents of his written report and explained the basis of his opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of a Court Reporter for DIR. Dr. McAdams noted that a 2006 MRI study of Respondent's lumbar spine disclosed age appropriate (Respondent is 73 years old) degenerative disc disease. Arthritic changes are also present in Respondent's cervical spine and knees. Dr. McAdams found Respondent's complaints of aches and pain to be credible, but not disabling. Dr. McAdams noted his observations of Respondent's body movements, which the ALJ summarized (See Factual Finding No. 22, A – E.).

After considering the documentary evidence and testimony, the ALJ found that Respondent had not met his burden of demonstrating, on the basis of competent medical evidence, that he was substantially incapacitated from performing the usual and customary duties of a Court Reporter for DIR.

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



RORY J. COFFEY
Senior Staff Attorney