

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

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

Respondent Cheryl L. Ramsey (Respondent) applied for disability retirement based on a psychological condition. By virtue of her employment as a Records Supervisor for Respondent City of El Monte (El Monte), she was a local miscellaneous member of CalPERS.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to Psychiatrist Perry Maloof, M.D. Dr. Maloof interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Maloof also performed a comprehensive IME. Dr. Maloof opined that Respondent had Depressive Disorder Not Otherwise Stated that was in remission. In addition, Dr. Maloof diagnosed Respondent with longstanding Mixed Personality Disorder. However, Dr. Maloof believed these diagnoses existed from the time Respondent started working for El Monte. Consequently, Dr. Maloof opined that Respondent is not substantially incapacitated to perform her job duties as an Records Supervisor. After reviewing all medical documentation and the IME report, CalPERS determined that Respondent was not disabled.

Respondent appealed this determination and exercised 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 Glendale, California on August 31, 2016. Respondent represented herself at hearing. El Monte did not appear at the hearing.

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 clarified how to obtain further information on the process.

At the hearing, Dr. Maloof testified in a manner consistent with his examination of Respondent and the report prepared after the IME. Dr. Maloof's medical opinion is that Respondent is not substantially incapacitated, even if she might have some limitations as a result of her psychological conditions. Dr. Maloof's opinion is that these limitations do not substantially incapacitate Respondent from the performance of her usual duties as a Records Supervisor.

Respondent testified on her own behalf. She did not call any physicians or other medical professionals to testify.

Respondent testified that beginning in 2008, she had a conflict with an employee at work. Respondent was sent to a psychologist as a result of this conflict. Ultimately, the psychologist concluded that Respondent "is currently fit for duty for the position of Records Supervisor for the City."

Respondent also testified that in 2010 she was harassed at work by one high-ranking officer. Respondent was placed on administrative leave while El Monte investigated the harassment allegations. El Monte ultimately reached a conclusion that Respondent's harassment complaint was unfounded. While on administrative leave, Respondent was once again sent to a psychologist for a fitness for duty evaluation. After this evaluation, Respondent was deemed unfit for duty as a Records Supervisor.

Respondent produced medical records from her treating psychologist which included a recommendation that Respondent return to work as of August 1, 2011.

Respondent testified that she had interactive meetings with El Monte regarding her employment, but that all of the positions offered to her "were part-time, at lower pay, had rapidly approaching deadlines that could not be met, and she was unqualified for them." Respondent testified that, for these reasons, she believed that she had no option but to retire and apply for disability retirement benefits.

At the hearing, Respondent also testified that she disagreed with the results of Dr. Maloof's examination and report. She testified that his report was inaccurate in 55 different areas. Respondent testified that she still feels depressed, scared and anxious. She does not know if she is substantially incapacitated; however, she believes that since El Monte will not accept her back to her former position because she is psychologically unfit for duty, then she should be entitled to receive disability retirement benefits from CalPERS.

Subsequent to the hearing, the ALJ reopened the record and issued an order asking the parties to address El Monte's obligation to file for disability on behalf of Respondent pursuant to Government Code section 21153. In particular, the ALJ solicited argument from the parties as to whether El Monte's failure to file for disability on behalf of Respondent should impact the ultimate determination in this matter. Respondent and CalPERS each submitted briefs addressing the issues raised by the ALJ. In addition, El Monte appeared and submitted a brief addressing the ALJ's order.

After considering all of the evidence introduced at the hearing, as well as the arguments contained in the briefs submitted by the parties after the hearing, the ALJ denied Respondent's appeal. The ALJ found that Respondent bears the burden to prove by a preponderance of evidence (based on competent medical evidence) that her psychological condition renders her unable to perform her usual job duties. The ALJ found that Respondent failed to carry her burden of proof. The ALJ found that the only competent medical evidence presented, by Dr. Maloof, established that Respondent is not substantially incapacitated from performing her duties as a Records Supervisor with El Monte.

The ALJ also found that because CalPERS accepted and reviewed Respondent's disability retirement application on the merits, the determination would not have been impacted if El Monte initiated the disability retirement application process.

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

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



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Senior Staff Attorney