

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Delisa Rios (Respondent Rios) was employed by the California Department of Social Services (Department) as an Analyst. By virtue of her employment, Respondent Rios was a miscellaneous member of CalPERS. On February 23, 2013, Respondent Rios filed a disability retirement application on the basis of chronic neck and low back pain. CalPERS sent Respondent Rios to an orthopedic surgeon for an Independent Medical Evaluation (IME) and review of Respondent Rios' submitted medical records. CalPERS determined that Respondent Rios was not permanently incapacitated from performance of the substantial duties of her position as an analyst. Respondent Rios appealed that determination. A hearing was held on November 3, 2016.

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

At the hearing, Respondent Rios did not appear. Respondent Rios offered no witnesses or documents in evidence. CalPERS submitted and the Administrative Law Judge (ALJ) received into evidence multiple documents, including the Statement of Issues, explanations of Respondent Rios' job duties and the physical requirements of her position, and the medical reports of CalPERS' IME Dr. Mohinder Nijjar, M.D.

Dr. Nijjar testified at the hearing about his examination, medical records review, and his own report about his evaluation of Respondent Rios. The ALJ found Dr. Nijjar's report to be persuasive as to his opinion that Respondent Rios is not permanently disabled or substantially incapacitated from the performance of her usual and customary job duties, and is therefore not permanently disabled. Dr. Nijjar's testimony and report stated that when he evaluated Respondent Rios she had no job duties which she could not perform. The ALJ also determined that although Respondent Rios may have some discomfort, it was insufficient to establish a permanent incapacity. The ALJ also determined that there was no evidence introduced or available which contradicted Dr. Nijjar's opinion.

After considering all of the documentary evidence and testimony of witnesses, the ALJ found that Respondent Rios failed to establish the requisite permanent medical requirements for a disability retirement. Accordingly, the ALJ found that the weight of the competent evidence supported the conclusion that Respondent Rios is ineligible for a disability retirement.

The ALJ concluded that Respondent Rios' 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 motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

February 15, 2017



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