

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Tadasha Hicks (Respondent) applied for Disability Retirement (DR) based on a neurological condition (pseudotumor cerebri, lumbar peritoneal shunt replacement and loss of vision). By virtue of her employment as a Special Education Trainee for Respondent Los Angeles Unified School District (LSUD), Respondent was a local miscellaneous member of CalPERS. CalPERS determined that Respondent was not disabled, and Respondent appealed. Respondent also appealed a determination by CalPERS that she was not entitled to an earlier retirement date nearly six years before Respondent filed for DR. A hearing was completed on December 5, 2016.

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.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to Board Certified Neurosurgeon Martin Krell. Dr. Krell interviewed Respondent, obtained a personal and medical history, conducted a physical exam, reviewed Respondent's medical records and the duty statement and physical requirements of her position.

Dr. Krell initially found that Respondent was not substantially incapacitated from the performance of her job duties. However, he revised his initial opinion because he had new facts about what Respondent's job actual entailed and concluded that Respondent is substantially incapacitated from performing her usual job duties as a Special Education Trainee for LSUD.

Beginning in May 2007, Respondent's mother contacted CalPERS on Respondent's behalf to inquire about DR. From May 2007 until Respondent filed for DR on June 28, 2013, five inquires were made about the DR process. Respondent testified at the hearing that she did not file for DR prior to June 28, 2013 due to the severe medical complications she suffered. Respondent further testified she was unable to manage her own affairs during that time period and ultimately signed a Power of Attorney allowing her mother to act on her behalf.

CalPERS argued that Respondent was on notice at the time of the initial call in May 2007 that she was eligible to file for DR and that a reasonable person in her position would have filed for DR.

The Administrative Law Judge (ALJ) found that Respondent was substantially incapacitated from her duties as a Special Education Trainee and her appeal to that issue was granted.

The ALJ further found that although Respondent was very ill for several years, she had the aid and assistance of her mother during that time and it was "not reasonable to conclude she was completely unable to file an application for several years." The ALJ concluded that Respondent's appeal on the basis of an earlier effective retirement date should be denied because she "did not meet her burden of showing that she acted promptly as required by statute, within six months of discovering she could apply for disability."

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.

February 15, 2017



TERRI L. POPKES
Senior Staff Attorney