

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Cher Lynch (Respondent Lynch) applied for service pending industrial disability retirement on the basis of an orthopedic (right hand and elbow) condition. By virtue of her employment as a Medical Technical Assistant with the California Department of State Hospitals – Vacaville (DSH), Respondent Lynch was a state safety member of CalPERS.

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

Despite proper notice being given to Respondent Lynch and Respondent DSH, no appearances were made at the November 9, 2016 hearing by either Respondent. Due to the failure to appear at the hearing, defaults of the Respondents were taken by the Administrative Law Judge (ALJ).

As part of CalPERS' review of her medical condition, Respondent Lynch was sent for an independent medical examination (IME) to Orthopedic Surgeon Dr. Robert Henrichsen. Dr. Henrichsen interviewed Respondent, reviewed her work history and job descriptions, obtained a history of his past and present complaints, reviewed medical records, and performed a comprehensive IME examination.

At the hearing, CalPERS made arguments, called Dr. Henrichsen as a witness, and introduced documentary evidence, including medical reports. Dr. Henrichsen testified to his examination and reports.

Dr. Henrichsen's IME report stated Respondent Lynch's injury did "not make good medical sense." Dr. Henrichsen's report stated that Respondent Lynch suffered a twisting and abrasion injury, but the long term pain experienced by Respondent Lynch was not supported by the medical records and examination. Dr. Henrichsen's also reviewed surveillance video for the IME report, which demonstrated that Respondent Lynch functioned without favoritism to either extremity. Dr. Henrichsen's IME report ultimately found that there were no job duties Respondent Lynch was unable to perform.

Dr. Henrichsen's testimony was consistent with his IME report. Dr. Henrichsen explained at hearing that Respondent Lynch had normal range of motion in her right shoulder and elbow. Dr. Henrichsen also explained that Respondent's right hand and wrist showed no evidence of carpal instability or muscle atrophy. Thus, there were no objective findings of Respondent Lynch's claimed incapacity.

The ALJ concluded that Respondent Lynch'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 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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