

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Heidi Lagache (Respondent) applied for Industrial Disability Retirement based on an orthopedic condition (right wrist). By virtue of her employment as a Correctional Supervising Cook for Respondent High Desert State Prison, California Department of Corrections and Rehabilitation (CDCR), she was a state safety member of CalPERS. CalPERS determined that Respondent was not disabled, and Respondent appealed. A hearing was completed on November 29, 2016.

On June 16, 2016, CalPERS sent a letter to Respondent which explained the hearing process 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.

As part of CalPERS' review of her medical condition, Respondent was referred for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Robert Henrichsen. Dr. Henrichsen interviewed Respondent, took Respondent's work history, and reviewed Respondent's job descriptions, medical records, diagnostic studies and surveillance videos. He also performed a comprehensive IME examination. Dr. Henrichsen found a "history of contusion right wrist, no work-related carpal tunnel syndrome, unexplained persistent subjective symptoms not supported by objective findings and unfavorable power-to-weight ratio."

In addition to the review of medical records and the physical examination of Respondent, Dr. Henrichsen also reviewed surveillance video which showed Respondent engaging in daily activities such as driving, shopping, lifting and carrying large boxes, using her cell phone and opening doors. While engaged in those activities, the surveillance video "did not show any evidence that Respondent favored her left hand to avoid the use of her right hand, experienced any pain due to the use of her right hand, or dropped items held in her right hand." Dr. Henrichsen opined that there were no specific job duties that Respondent was unable to perform, and that Respondent was not substantially incapacitated from performing the duties of a Correctional Supervising Cook. At the hearing, Dr. Henrichsen testified to his examination and report. Dr. Henrichsen's medical opinion is that Respondent is not substantially disabled.

Respondent testified telephonically at the hearing that her disability occurred on April 4, 2014, when an iron door was blown shut on her right wrist. She further testified that her right wrist hurts "when she drives a vehicle, writes, types, and engages in normal activities of daily living. Her right hand sometimes shakes for no reason, she sometimes feels tingling in that hand, and her right thumb is numb." Respondent testified that the pain in her right wrist precludes her from being able to perform the essential functions of her job as a Correctional Supervising Cook. She did not call any physicians or other medical professionals to testify.

The Administrative Law Judge (ALJ) found that Respondent bears the burden to show by a preponderance of evidence (based on competent medical evidence) that her symptomology renders her unable to perform her usual job duties. The ALJ found that Respondent failed to carry her burden of proof and that Respondent did not establish by competent, objective medical opinion, that, at the time of application, she was permanently disabled or incapacitated from performing her usual duties of a Correctional Supervising Cook for CDCR.

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.

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Senior Staff Attorney