

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

Respondent Elizabeth Hoffman (Respondent Hoffman) worked as an Electrician II for Respondent California Department of Corrections and Rehabilitation, Wasco State Prison (Respondent CDCR). By virtue of her employment, Respondent Hoffman is a state safety member of CalPERS.

Respondent Hoffman applied for Industrial Disability Retirement with CalPERS on the basis of an internal (West Nile Virus) condition. CalPERS referred Respondent Hoffman for an Independent Medical Examination (IME) with Samuel B. Rush, a doctor of internal medicine. Dr. Rush issued a written report finding Respondent Hoffman was able to perform the usual and customary duties of an Electrician II for Respondent CDCR. CalPERS denied Respondent Hoffman's application, which Respondent Hoffman appealed.

At the hearing, Dr. Rush testified that on the on the basis of his physical examination, and taking into account the physical requirements of the Electrician II position, he did not believe that Respondent Hoffman was substantially incapacitated. Respondent Hoffman may have contracted West Nile Virus in 2007, but Dr. Rush believed her condition has resolved since then.

At the hearing, Respondent Hoffman presented a single, hearsay medical report from Dr. Meth, a physician retained to evaluate her for purposes of determining her eligibility for workers' compensation benefits and treatment. She did not call any physicians to testify at the hearing or state an opinion as to whether she was substantially incapacitated, the standard by which CalPERS administers disability retirement benefits.

The Administrative Law Judge (ALJ) considered all the evidence, and credited as persuasive the report and testimony of Dr. Rush. The ALJ held that the workers' compensation report proffered by Respondent Hoffman was not relevant to the question of whether she was substantially incapacitated. Moreover, Respondent Hoffman's lay testimony concerning her disability was insufficient to satisfy her burden of proof on substantial incapacity, which is a matter of scientific medical knowledge. For these reasons, the ALJ concluded that Respondent Hoffman's appeal should be denied.

Counsel for Respondent Hoffman submitted a written argument against adoption of the Proposed Decision to CalPERS' Board of Administration. Counsel argued that Dr. Rush was biased against Respondent Hoffman and that the ALJ should have given more weight to the opinion set forth in the workers' compensation records submitted by Respondent Hoffman. After considering counsel's argument, the Board adopted the Proposed Decision as its own Decision on December 21, 2016, thereby denying Respondent Hoffman's appeal.

Counsel for Respondent Hoffman filed a Petition for Reconsideration thereafter. The Petition simply attaches counsel's prior written argument that was previously submitted

legal argument that would justify reconsideration. For these reasons, Staff argues the Petition for Reconsideration be denied. Because the Board's Decision applies the law to the salient facts of the case, the risks of denying Respondent Hoffman's Petition for Reconsideration are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

February 15, 2017



KEVIN KREUTZ
Senior Staff Attorney