

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Rosa Ponce (Respondent Ponce) was employed by the Fairfield Suisun Unified School District (District) as a Cafeteria Assistant I (Assistant). By virtue of her employment, Respondent Ponce was a miscellaneous member of CalPERS.

Respondent Ponce filed an application for disability retirement on August 27, 2013, and subsequently she filed an application for service retirement pending disability retirement on November 27, 2013. Respondent Ponce claims strain of lumbosacral joints and ligaments, sciatica, spondylosis, myofascial pain syndrome, low back pain, thoracic segmental dysfunction, tension headaches, hyperthyroidism, and paresthesia. CalPERS sent Respondent Ponce to an Orthopedic Surgeon for an Independent Medical Evaluation (IME) and review of Respondent Ponce's previously submitted medical records. CalPERS determined that Respondent Ponce was not permanently incapacitated from performance of the substantial duties of her position as an Assistant. Respondent Ponce appealed that determination. A hearing was held on November 16, 2016.

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

Respondent Ponce appeared and testified at the hearing. Respondent Ponce informed the court that she had supplied additional medical records the day prior to the hearing to CalPERS. CalPERS then requested a continuance so that CalPERS could gather, review, and respond to that evidence. The Administrative Law Judge (ALJ) granted that continuance by holding the record open after the hearing for CalPERS to submit Respondent Ponce's additional medical evidence to its IME, and provide the IME's review of that evidence to the court.

Respondent Ponce testified that she was unable to perform her job duties due to pain in every region and limb of her body. She testified that she is in constant pain from her low back, spine, and tingling throughout. While on light duty she suffered the same pain. CalPERS submitted and the ALJ received into evidence multiple documents, including the Statement of Issues, explanations of Respondent Ponce's job duties and the physical requirements of her position, and the medical reports and testimony of CalPERS' IME Dr. Andrew Brooks, M.D.

Dr. Brooks, a board-certified Orthopedic Surgeon, testified at the hearing about his examination of Respondent Ponce, his medical records review, and his own report about his evaluation of Respondent Ponce. Dr. Brooks' testimony and report stated that upon evaluation Respondent Ponce had no job duties which she was unable to perform. Dr. Brooks testified that her symptoms were unusual and did not match the objective

findings and lack thereof. He discerned no findings which were abnormal or would cause her to be incapacitated from her job duties. Dr. Brooks, in his review of late submitted medical reports, found those reports to contain no medical information which would change his original opinion that Respondent Ponce is not incapacitated from performance of her job duties.

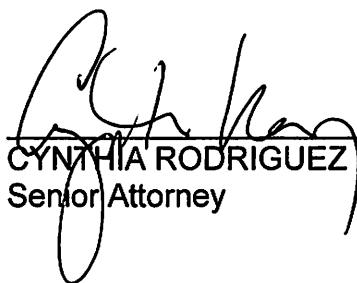
The ALJ found Dr. Brooks' opinion that Respondent Ponce is not substantially incapacitated from her usual job duties to be persuasive. The ALJ further determined that Respondent Ponce submitted no evidence to challenge or contradict Dr. Brooks' medical opinion.

After considering all of the documentary evidence and testimony of witnesses, the ALJ found that Respondent Ponce 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 Ponce is ineligible for a disability retirement.

The ALJ concluded that Respondent Ponce'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.

March 15, 2017



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