

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Jessica R. Smith (Respondent Smith) applied for disability retirement on the basis of her rheumatological (rheumatoid arthritis) condition. By virtue of her employment as a Buyer II with Respondent Elk Grove Unified School District (Respondent District), Respondent Smith is a local miscellaneous member of CalPERS.

As part of CalPERS' review of his medical condition, Respondent Smith was sent for an Independent Medical Examination (IME) to rheumatologist Douglas Haselwood M.D. Dr. Haselwood interviewed Respondent Smith, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. In addition to the work documents and medical history, Dr. Haselwood also reviewed a surveillance report and accompanying video taken by CalPERS' investigators in March and April 2015. Dr. Haselwood performed a comprehensive IME examination on July 30, 2015, and concluded in his August 3, 2015 IME report that Respondent Smith was not substantially incapacitated for the performance of her duties.

To be eligible for disability retirement, competent medical evidence must demonstrate the member is substantially incapacitated from performing the usual and customary duties of her position. Furthermore, the injury and condition that is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

Prior to the hearing, CalPERS explained the hearing process to Respondent Smith and the need to support her case with witnesses and documents. CalPERS provided Respondent Smith with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Smith's questions and clarified how to obtain further information on the process. Neither Respondent Smith nor Respondent District appeared at the hearing. Therefore, it proceeded as a default under Government Code section 11520.

At the hearing, CalPERS made arguments, called investigator Troy Shinpaugh and Dr. Haselwood as witnesses. Through its witnesses, CalPERS introduced documentary evidence, including the investigative report with video, and medical reports. Shinpaugh testified to his investigative report and surveillance of Respondent Smith. Shinpaugh testified that he verified Respondent Smith's identity through the Department of Motor Vehicles, along with the internet and social media sites. During March and April 2015, Shinpaugh recorded Respondent Smith's activities, and prepared a surveillance report accompanied by the surveillance video. The video was provided to Dr. Haselwood for his IME review.

Dr. Haselwood testified to his examination and reports. Dr. Haselwood explained his IME report, which states that Respondent Smith was not substantially incapacitated from the performance of her job duties.

Although Respondent Smith complained of rheumatological pain preventing her from doing her job as Buyer II, Dr. Haselwood's IME report noted that Respondent Smith's position was primarily sedentary. Dr. Haselwood's review of the surveillance video indicated a lack of evidence showing that Respondent Smith's arthritic symptomatology impaired her functionality.

Dr. Haselwood's IME report explained that Respondent Smith had some legitimate sources of musculoskeletal discomfort. However, Dr. Haselwood explained in his report that Respondent Smith's medical reports do not consistently document measurable clinical or physical impairments that would preclude her from doing her job.

Dr. Haselwood's testimony was consistent with his IME report concluding that Respondent Smith was not substantially incapacitated from the performance of her usual and customary job duties as a Buyer II.

The Administrative Law Judge concluded that Respondent Smith's appeal should be denied because Respondent Smith is not substantially incapacitated from performing her usual duties as a Buyer II with Respondent District. 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.

March 15, 2017



CHARLES H. GLAUBERMAN
Senior Staff Attorney