

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Patricia Dillon (Respondent Dillon) was employed as the Director of Apprenticeship Programs by the Rancho Santiago Community College District (Respondent District) since 2002. She worked for Respondent District in that position for 10 years, until she was medically laid off on December 17, 2012. On December 14, 2012, Respondent District filed an application for disability retirement on her behalf. CalPERS acknowledged receipt of the application, and advised Respondent Dillon to complete and submit a disability retirement application. On April 22, 2013, Respondent Dillon submitted her application for disability retirement on the basis of rheumatologic conditions (fibromyalgia and bilateral ankle arthritis).

CalPERS reviewed written descriptions of Respondent Dillon's job duties and relevant medical reports submitted by Respondent District. CalPERS also sent Respondent Dillon for an Independent Medical Examination (IME) with board-certified Internist and Rheumatologist, Quang Dihn Vo, M.D. Based on relevant medical evidence, CalPERS determined Respondent Dillon was not substantially incapacitated from performance of her duties.

Respondent Dillon appealed CalPERS' determination. A hearing was completed over two days, to determine whether Respondent Dillon was substantially incapacitated from performing her usual and customary job duties. Respondent Dillon was represented by counsel at all times during the hearing process.

Respondent Dillon testified at the hearing regarding her job duties and her inability to perform her usual and customary job duties due to her physical limitations. Respondent Dillon testified concerning her medical conditions and the limitations imposed by the health issues, specifically fibromyalgia.

Respondent Dillon's treating physician, board-certified Family Practitioner Lisa Thomsen, M.D., testified that she has been treating Respondent Dillon for fibromyalgia since 2002 and currently treats 100 patients with fibromyalgia. Dr. Thomsen testified that Respondent Dillon's symptoms include problems sleeping, lightheadedness, migraines, muscle ache, muscle pain, abnormal fatigue and "fibro fog" which affects Respondent Dillon's decision-making ability.

Respondent Dillon was also treated by Rheumatologist Alan Compton, M.D. for fibromyalgia and chronic tension headaches. Dr. Compton did not testify at the hearing, but his reports and medical records were reviewed and relied on by Dr. Thomsen. Dr. Compton requested that Respondent District allow Respondent Dillon to work on a modified schedule, which allowed Respondent Dillon to work from home on an as needed basis and to take breaks to rest while working in her office. Respondent District allowed Respondent Dillon to work the modified schedule from 2002 until February 2012. In December 2012, Respondent District informed Respondent Dillon that her leave entitlements were exhausted, so Respondent District was required to put Respondent Dillon on a medical lay-off, place her on a 39 month rehire list, and to file for Disability Retirement on her behalf.

CalPERS IME Dr. Vo testified regarding his examination and diagnosis of Respondent Dillon. Dr. Vo confirmed Respondent Dillon's fibromyalgia, migraines and arthritis, but concluded that they did not preclude her from performing her usual job duties from a neurological point of view. Dr. Vo acknowledged that fibromyalgia is a complicated disease, the level of fibromyalgia pain may differ from day to day, and fibromyalgia patients can have good and bad days. Dr. Vo testified that he was unaware that Respondent Dillon worked under an accommodated work schedule for 10 years prior to her ankle injury. And he testified that his review of medical records was limited to records after February 2012, and that he did not ask about her job duties, because he felt there was no reason to since her last day of work was in May, 2012. Dr. Vo testified that his opinion was limited to only the day he performed his examination. He could not opine as to her pain and/or ability to work on any other day.

The Administrative Law Judge (ALJ) found that Respondent Dillon met her burden of proof to show she is substantially incapacitated to perform her job duties. The ALJ held that CalPERS' evidence consisting of Dr. Vo's testimony and reports, was insufficient to rebut Respondent Dillon's evidence and the Respondent District's belief she was disabled. The ALJ reasoned that Dr. Vo acknowledged that fibromyalgia symptoms vary from day to day, that his opinion was limited only to the date of his examination, that he reviewed only some of Respondent Dillon's medical records, was unaware she worked under an accommodated work schedule, and did not ask her about her job duties and limitations. The ALJ concluded that Dr. Vo's opinions and testimony, based on a single IME examination, were entitled to less weight than Dr. Thomsen's opinion and testimony based on 14 years of treating Respondent Dillon.

The ALJ concluded that Respondent Dillon's appeal should be granted.

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 will likely not file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

April 19, 2017

for 
ELIZABETH YELLAND
Senior Staff Attorney