

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Sheri Meyer (Respondent Meyer) worked as a Claims Adjuster for Respondent State Compensation Insurance Fund (Respondent SCIF). By virtue of her employment, Respondent Meyer is a state miscellaneous member of the California Public Employees' Retirement System (CalPERS).

On December 23, 2015, Respondent SCIF submitted an application for disability retirement on behalf of Respondent Meyer. The employer-originated application did not provide information regarding Respondent Meyer's specific disability or the limitations or preclusions it imposed on her work.

CalPERS notified Respondent Meyer about the employer-originated disability retirement application by letter dated January 5, 2016. CalPERS sent Respondent Meyer a second letter dated January 7, 2016 which contained the same information as its previous correspondence. CalPERS sent Respondent Meyer a third letter on January 26, 2016, again advising her of her right to provide CalPERS evidence regarding her eligibility for disability retirement.

On February 10, 2016, Respondent Meyer submitted an application for disability retirement on the basis of her orthopedic (neck and back), psychological (stress), and/or neurological (migraines) conditions. CalPERS requested an Independent Medical Evaluation (IME) from Robert D. Ansel, M.D., a board-certified Neurologist, Arthur M. Auerbach, M.D., a board-certified Orthopedic Surgeon, and Michael S. Barnett, M.D., a Psychiatrist.

Dr. Auerbach examined Respondent Meyer on March 29, 2016 and authored a report documenting the IME. Dr. Auerbach opined there were no specific job duties Respondent Meyer was unable to perform due to an orthopedic (neck and back) condition. Dr. Auerbach concluded that she was not substantially incapacitated for the performance of her usual job duties as a Claims Adjuster due to her orthopedic conditions.

Dr. Ansel examined Respondent Meyer on April 4, 2016 and authored a report documenting the IME. Dr. Ansel opined there were no specific job duties Respondent Meyer was unable to perform due to a neurologic condition. Dr. Ansel concluded that she was not substantially incapacitated for the performance of her usual job duties as a Claims Adjuster due to a neurologic (migraines) condition.

Dr. Barnett performed an IME of Respondent Meyer on April 15, 2016, and prepared a report summarizing the IME. Dr. Barnett opined that Respondent Meyer "has moderate symptoms of major depression," however, he did not believe her symptomatology would interfere with her performance in the workplace. Dr. Barnett concluded that Respondent Meyer was not substantially incapacitated for the performance of her usual duties as a Claims Adjuster.

Based on competent medical evidence, CalPERS determined that Respondent Meyer was not permanently disabled or incapacitated from performing the usual and customary duties of a Claims Adjuster at the time Respondent SCIF filed the application for disability retirement. CalPERS notified Respondent SCIF and Respondent Meyer of its determination by letter dated May 19, 2016. Respondent Meyer filed a timely written appeal, and the matter proceeded to hearing before an Administrative Law Judge (ALJ) on January 31, 2017.

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

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

At the hearing, Dr. Auerbach testified consistently with his IME report. He also testified that Respondent Meyer told him at the IME that she was performing her regular workload, but with pain. He testified that while she showed a loss of range of motion and had subjective complaints of pain, he found no significant orthopedic ailment that would prevent her from performing her job duties as a Claims Adjuster, and she was in fact performing them.

Dr. Ansel testified consistently with his IME report. He testified that from a neurological standpoint Respondent Meyer "had a normal examination." Dr. Ansel further testified that while Respondent Meyer suffered from migraines from time to time, the migraines do not render her substantially incapacitated.

Dr. Barnett testified consistently with his IME report. He testified that aside from being mildly depressed, Respondent Meyer's mental status exam was "normal." Dr. Barnett testified that Respondent Meyer did not show any signs of a cognitive deficit and that she was continuing to work. Dr. Barnett concluded that Respondent Meyer's symptoms were not incapacitating.

Respondent Meyer testified that she was still working at SCIF. She further testified that she believed she is physically capable of performing her job duties on a more consistent basis if Respondent SCIF provides her a modified work schedule and accommodates her medical needs. Respondent Meyer also testified that her claim for disability on the basis of her psychological (stress) condition is due to harassment against her by her coworkers. Respondent Meyer presented the Physician's Report on Disability forms completed by various physicians who have treated her.

The ALJ found that Respondent SCIF had the burden of producing sufficient competent medical evidence to establish that Respondent Meyer was substantially incapacitated from performing her duties as a Claims Adjuster at the time it applied for disability retirement on her behalf.

The ALJ concluded that Respondent Meyer's appeal should be denied because neither Respondent SCIF nor Respondent Meyer produced sufficient medical evidence to establish that she was substantially incapacitated for the performance of her usual duties as a Claims Adjuster. 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.

April 19, 2017



AUSTA WAKILY
Senior Staff Attorney