STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION

Juliana D. Carvajal (Respondent) applied for disability retirement based on orthopedic (neck, shoulders, hands, wrists, back, hips, knees, legs, feet) conditions. By virtue of her employment as an Office Technician (Typing) for Respondent California Department of Industrial Relations (Respondent DIR), Respondent was a miscellaneous member of CalPERS.

Respondent filed an application for service pending disability retirement on January 13, 2016, and has been receiving benefits since that time.

As part of CalPERS’ review of Respondent’s medical condition, Juon-Kin Pong, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Pong interviewed Respondent, reviewed her work history and job descriptions, and reviewed her medical records pertaining to her present complaints. Dr. Pong opined that Respondent is not substantially incapacitated from performing her usual and customary job duties.

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

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of her position.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on October 19, 2017. Respondent did not appear at the hearing, and Respondent contacted both OAH and CalPERS on the morning of the hearing to advise of her non-appearance. Respondent DIR also did not appear at the hearing.

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

At the hearing, Dr. Pong testified in a manner consistent with his examination of Respondent and the IME report. Dr. Pong found minimal objective findings of any orthopedic injuries in Respondent’s medical records. Although Respondent reported full body pain, she was unable to provide a full medical history. In addition, Dr. Pong perceived that Respondent resisted his testing during the examination. Dr. Pong’s medical opinion is that Respondent is not precluded from performing her usual duties based on any orthopedic condition. Therefore, Respondent is not substantially incapacitated from her job as an Office Technician.
After considering all of the evidence introduced, as well as argument by CalPERS' counsel, the ALJ denied Respondent's appeal. The ALJ found that Respondent did not present competent medical evidence in support of her application. Thus, Respondent did not meet her burden of establishing that she is substantially incapacitated from performing her usual duties as an Office Technician for Respondent DIR.

The ALJ concluded that Respondent is not eligible for disability retirement.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

December 20, 2017

[Signature]

CHARLES H. GLAUBERMAN
Senior Attorney