

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Irma G. Sepulveda (Respondent) worked as a School Bus Driver for Respondent Santa Cruz City High School District (Respondent Santa Cruz City HSD). By virtue of her employment, Respondent was a local miscellaneous member of CalPERS.

Respondent applied for disability retirement on March 14, 2018, based on an orthopedic (back) condition.

As part of CalPERS' review of Respondent's medical condition, Mark W. Howard, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Howard interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints and reviewed her medical records. Dr. Howard opined that Respondent is not substantially incapacitated from performing her job duties as a School Bus Driver.

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 duration which is expected to last at least 12 consecutive months or will result in death.

After reviewing all of the medical documentation and the IME report, 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 July 22, 2019. Respondent represented herself at the hearing. Respondent Santa Cruz City HSD 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. Howard testified in a manner consistent with his examination of Respondent and the IME report. Dr. Howard observed no significant orthopedic or neurologic pathology in Respondent's spine. He acknowledged that Respondent reported pain with "lifting and/or repetitive bending activities" but did not find any medical reason that she could not do such activities. Dr. Howard also concurred with the reports of Respondent's physician, Melinda Brown, M.D., and her chiropractor,

Thomas E. Smith, D.C., stating that a careful and regular exercise program would be likely to alleviate Respondent's most significant discomfort. Dr. Howard opined that Respondent is not substantially incapacitated from performing her job duties.

Respondent testified on her own behalf regarding her job duties and the physical limitations due to her orthopedic (back) condition. Respondent testified that before beginning her route, she would conduct a safety inspection of the bus. This required her to check the undercarriage, tires, cables, reflectors, seats and windows of the bus. Respondent also examined the hoses and checked the oil level. Respondent testified that these tasks required her to bend and stretch. Along her route, Respondent helped children in and out of the bus, including children using wheelchairs. Sometimes she carried children, and she also had to bend, stoop and push to belt them in or to operate the wheelchair ramp.

Respondent further testified that sitting through her route between April and December 2017 left her lower back tired and painful. She experiences regular back pain extending from her ribs to her hips. Picking up heavy items is difficult as is picking any items up from the floor. Respondent can do housework but not yardwork. Physical therapy and chiropractic treatment have provided Respondent with only temporary pain relief. Respondent testified that she uses medication to control her back pain. She did not describe any home exercise program or recreational sports activities.

Respondent did not call any physicians or other medical professionals to testify; however, she submitted medical records from her treating physician, Dr. Brown, and her chiropractor, Dr. Smith, to support her appeal.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent did not establish, through competent medical evidence, that she is unable to perform her duties as a School Bus Driver.

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.

September 18, 2019

AUSTA WAKILY
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