

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT TO ADOPT THE PROPOSED DECISION

Kristin Roots (Respondent) applied for disability retirement based on various conditions: rheumatological (fibromyalgia), psychological (depression, anxiety) and gastroenterological (stomach issues, anemia, gastroesophageal reflux disease). By virtue of her employment as a Program Developer for Respondent City of Sacramento (Respondent City), Respondent was a local miscellaneous member of CalPERS.

Respondent filed an application for service pending disability retirement on January 11, 2018 and has been receiving benefits since that time.

As part of CalPERS' review of Respondent's medical condition, CalPERS retained board-certified physicians to perform an Independent Medical Examination (IME) in their specialty. Each IME interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records.

Dr. Scott Anderson, board-certified Rheumatologist, evaluated Respondent's claimed fibromyalgia condition. He opined that there were no job duties Respondent could not perform, and therefore she was not substantially incapacitated from performing her job duties. Although she might have some difficulty manipulating heavy objects, that difficulty is not significant enough to constitute substantial incapacity.

Dr. Alberto Lopez, board-certified Psychiatrist, evaluated Respondent's claimed psychological conditions. Dr. Lopez found that she was able to perform her work activities, and concluded no psychiatric conditions preclude her from performing her duties.

Dr. Patricia Wiggins, board-certified in Internal Medicine and Occupational Medicine, evaluated Respondent's claimed gastroenterological conditions. Dr. Wiggins concluded that Respondent was not substantially incapacitated from performing her job duties. In addition, Dr. Wiggins opined that it is likely Respondent's claimed conditions were exaggerated in an attempt to avoid going to work.

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 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 requested a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on October 1, 2019. Neither Respondent nor Respondent City appeared 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, each of the IMEs testified in a manner consistent with his or her examination of Respondent and the IME report. All the IMEs agree that Respondent is not substantially incapacitated to perform her job duties. Therefore, they agree that Respondent is not disabled.

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 bears the burden of proof to show that she is substantially incapacitated to perform her job duties. Since she did not appear and did not submit any evidence, she did not meet her burden. To qualify for disability retirement, Respondent must have offered evidence, based upon competent medical opinion, to establish that when she applied she was substantially incapacitated for the performance of her duties. Because she failed to offer such evidence, or any evidence, her disability retirement application must be denied. 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.

November 20, 2019

RORY J. COFFEY
Senior Attorney