

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Respondent Denise Serrano (Respondent) applied for disability retirement based on a neurological (brachial plexus disorder) condition. By virtue of her employment as a Secretary for Respondent Banta Elementary School District (Respondent District), Respondent was a local miscellaneous member of CalPERS.

Respondent filed an application for disability retirement on April 18, 2018. Respondent subsequently filed an application for service retirement on January 2, 2019 and has been receiving service retirement benefits since that time.

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.

As part of CalPERS' review of Respondent's medical condition, Michael M. Bronshvag, M.D., a board-certified Internist and Neurologist, performed an Independent Medical Examination (IME) of Respondent. Dr. Bronshvag interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Michael M. Bronshvag, M.D. opined that Respondent is not substantially incapacitated.

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 21, 2019. Respondent represented herself at the hearing. Respondent District did not appear at the hearing, and the matter proceeded as a default proceeding with respect to Respondent District only.

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. Michael M. Bronshvag, M.D. testified in a manner consistent with his examination of Respondent and his IME report. During the examination, Respondent told Dr. Bronshvag that she worked as a Secretary for about 15 years, and described her job as having a "heavy workload" without any support or assistance. Respondent told the doctor that she began experiencing pain in her neck

and arms while using her keyboard, doing data entry, and writing. Respondent, as explained by Dr. Bronshvag at hearing, began experiencing symptoms in March 2009, which worsened by August 2009. Respondent reported having difficulty performing repetitive tasks, lifting heavy objects, and performing what she described as “effortful” tasks.

Dr. Bronshvag conducted a physical examination of Respondent and reported normal findings and results. Respondent had full range of motion and did not have any abnormalities in her back. Additionally, all but one of the medical reports that Dr. Bronshvag reviewed, which covered a period of approximately 10 years, showed the same physical findings as found by Dr. Bronshvag during his examination. For these reasons, Dr. Bronshvag opined that Respondent was not substantially incapacitated, as there were no objective findings to corroborate her subjective complaints of difficulty and pain.

Dr. Wladislaw Ellis, the only treating doctor who reported physical findings different from those reported by Dr. Bronshvag, is a Neurologist who evaluated Respondent in June 2011. In that report, Dr. Ellis noted slow reflexes in Respondent’s upper extremities, decreased sensation, evidence of swelling in the arms, and mottling of the hands. Dr. Ellis concluded that Respondent had thoracic-outlet syndrome and that her pain and clinical findings preclude her from employment. Dr. Ellis’ report did not demonstrate he understood Respondent’s job duties, nor did he apply the CalPERS substantial incapacity standard for disability benefits. Dr. Ellis also did not testify at hearing, and Respondent did not call any other physicians or other medical professionals to testify on her behalf.

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 had the burden to prove, by competent medical opinion, that she was substantially incapacitated. The ALJ ruled that Respondent did not meet her burden because she did not submit any medical evidence. Moreover, the ALJ found that Dr. Ellis’ opinion was administrative hearsay, applied the workers’ compensation system standard for disability benefits but not the CalPERS’ standard, and was not reliable when compared to the live testimony of Dr. Bronshvag, CalPERS’ testifying physician. The ALJ found Dr. Bronshvag to be credible and that his opinions were supported by the objective medical findings. For these reasons, 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 18, 2019

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