

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Lisa Trevino-Angelo (Respondent) was employed by the Department of Motor Vehicles (DMV) as a Personnel Specialist. By virtue of her employment, Respondent was a State miscellaneous member of CalPERS. Respondent submitted an application for disability retirement on the basis of claimed internal conditions (myofascial pain syndrome, migraine headaches, chronic fatigue syndrome) and claimed psychological conditions (anxiety and depression). Staff reviewed applicable medical reports and a written description of Respondent's usual and customary job duties. Patricia Wiggins, M.D., Board Certified in Internal Medicine, and Benjamin Kaufman, M.D., Board Certified in Psychiatry, reviewed applicable medical reports, a written job description, and performed Independent Medical Evaluations (IME) of Respondent. Doctors Wiggins and Kaufman prepared written reports which contained their observations, findings, conclusions, and opinions regarding Respondent's condition. Both Dr. Wiggins and Dr. Kaufman opined that Respondent was not substantially incapacitated from performing the usual and customary duties of a Personnel Specialist for the DMV. Staff denied Respondent's application for disability retirement. Respondent appealed staff's determination and a hearing was held on March 11, 2014.

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

Prior to 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 handbook. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

Respondent did not appear at the hearing. The Administrative Law Judge (ALJ) received evidence confirming that Respondent had received proper written notification regarding the date, time, and place of the appeal hearing. The ALJ also noted that, two days before the scheduled hearing, Respondent provided the Office of Administrative Hearings (OAH) with written notice that she would not appear at/attend the scheduled hearing. The ALJ found that CalPERS had fully complied with notice requirements (Government Code sections 11505 & 11509), and that, therefore, the hearing could proceed as a default pursuant to Government Code section 11520.

The ALJ received into evidence and considered the contents of a written job description for the position of Personnel Specialist with DMV.

The ALJ received into evidence and considered the contents of the written reports prepared by Dr. Wiggins and Dr. Kaufman. The ALJ found that both Dr. Wiggins and Dr. Kaufman concluded that Respondent was not substantially incapacitated, physically

and/or psychologically (respectively), from performing the usual and customary duties of the position of Personnel Specialist with the DMV.

The ALJ also received into evidence and considered evidence demonstrating that Respondent had been criminally charged by the Sacramento District Attorney's Office with violation of two sections of the Penal Code relating to making false or fraudulent claims in order to receive retirement benefits. Respondent pleaded not guilty to the charges and the matter was the subject of a jury trial. The ALJ acknowledged that the jury found Respondent guilty of both counts, that Respondent was sentenced to 40 days in jail, three years of probation, and was fined, and that the verdict became final on December 13, 2013.


After considering all of the evidence, the ALJ concluded, in relevant part, as follows:

"...respondent's claim of disability...was found to be fraudulent by a jury in November 2012. All of the requirements for collateral estoppel are met and the convictions are conclusive evidence that respondent's claim of disability is false. Respondent is not substantially incapacitated by either a physical or psychological condition for performance of her usual and customary duties as a Personnel Specialist for DMV. Her Application, therefore, is properly denied."

The ALJ concluded that Respondent's appeal should be denied. 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 motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

May 21, 2014



RORY J. COFFEY
Senior Staff Attorney