

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Susan Hale (Respondent) worked for the California Department of Motor Vehicles (DMV) as a Motor Vehicle Field Representative. Due to her employment, Respondent is a state miscellaneous member of CalPERS. She filed an application for disability retirement claiming disability on the basis of an orthopedic condition related to her bilateral upper extremities, which she sustained while performing her duties as a Motor Vehicle Field Representative. On her application, Respondent indicated that her orthopedic condition limited her from performing the physical duties of her position such as writing, typing, reaching and using her hands for long periods of time.

Staff reviewed medical reports regarding Respondent's orthopedic upper extremity condition and a written description of her usual and customary job duties. CalPERS retained Alice Martinson, M.D., a board-certified Orthopedic Surgeon and Hans Barthel, M.D., a Rheumatologist, to conduct Independent Medical Examinations. Dr. Martinson and Dr. Barthel examined Respondent and reviewed medical records and a written job description. Based on their examinations and records review, both doctors issued reports indicating that Respondent was not substantially incapacitated for performing the usual and customary duties of a Motor Vehicle Field Representative. Specifically, Dr. Martinson noted that the objective findings were minimal, and concluded that there was no specific job duty Respondent was unable to perform due to a physical condition. Dr. Barthel found that, although Respondent had bilateral hand limitations, the work requirements of her job description do not go beyond those limitations. As a result, CalPERS staff denied Respondent's application for disability retirement. In response, Respondent submitted a timely appeal of staff's determination and a hearing was held to determine whether Respondent was substantially incapacitated from performance of her duties as a Motor Vehicle Field Representative.

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 claimed basis for the disability must be permanent or of an extended and uncertain duration.

The medical evidence presented by Respondent in support of her disability retirement application came from her workers' compensation treating physician, Dr. Behrman. At the time Respondent applied for disability retirement, Dr. Behrman imposed the following work restrictions: preclude repetitive or heavy gripping or squeezing with either hand; limit rapid repetitive activity such as keyboard activity and writing for no more than 4 hours a day with breaks every 30 minutes; precluded from repetitive elbow flexion activities. As Dr. Barthel testified at the hearing, those modified duties are consistent with the physical duties of the Motor Vehicle Field Representative, as described in the duty statement for Respondent's position.

At the hearing, Respondent was present and represented herself. She testified about her employment history with the DMV, the job duties performed by the Motor Vehicle Field Representative, and how her bilateral upper extremity injury caused her pain and

discomfort for extended periods of time. During her testimony, Respondent also discussed her symptoms and the treatment she received for her upper extremity injury.

Based on the testimony presented at the hearing, as well as the evidence submitted by the parties, the Administrative Law Judge (ALJ) found that the competent medical evidence establishes that Respondent is not incapacitated for the performance of her duties as a Motor Vehicle Field Representative for the DMV. As the ALJ explained, the testimony of Dr. Barthel, which is fully corroborated by that of Dr. Martinson, supports that at the time Respondent filed her disability retirement application, she was able to perform all the duties of her position. Further supporting this determination, as the ALJ noted, was the fact that the restrictions imposed by Dr. Behrman were compatible with the physical demands of the Motor Vehicle Field Representative. Consequently, the ALJ denied Respondent's application for disability retirement.

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.

The Proposed Decision is consistent with the law and the facts. For the reasons stated above, staff argues that the Board should 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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

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