

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Jo Tenner (Respondent Tenner) applied for disability retirement on the basis of orthopedic, internal and psychological conditions. By virtue of her employment as a Case Manager in the Career Link Program with the City of Compton, Respondent Tenner is a local miscellaneous member of CalPERS.

Prior to the hearing, CalPERS explained the hearing process to Respondent Tenner and the need to support her case with witnesses and documents. CalPERS provided Respondent Tenner with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Tenner's questions and clarified how to obtain further information on the process.

As part of CalPERS' review of her medical condition, Respondent Tenner was sent for three Independent Medical Examinations (IME). Peter S. Borden, M.D., performed an Orthopedic IME, Anitha T. Mitchell, M.D. conducted an Internal Medicine IME, and Nathan E. Lavid, M.D., conducted a Psychiatric IME of Respondent Tenner. All three physicians prepared reports and Drs. Mitchell and Lavid testified at hearing.

The physical examination performed by Dr. Borden revealed full range of motion of the neck, shoulder, and elbows and in Dr. Borden's opinion, Respondent Tenner's subjective complaints were not substantiated by his objective findings. Dr. Borden did not derive any orthopedic diagnoses for Respondent Tenner and was of the opinion that she was not disabled for the performance of the usual duties of her position.

The physical examination performed by Dr. Mitchell yielded essentially normal findings. Dr. Mitchell was not able to verify the presence of Fibromyalgia on examination and noted there was no tenderness or swelling in Respondent Tenner's extremities. In Dr. Mitchell's opinion, there was no specific duty that Respondent Tenner could not perform because of any internal medical condition.

Dr. Lavid conducted a mental health examination of Respondent Tenner and reviewed pertinent records. Dr. Lavid's differential diagnosis was Mood Disorder due to a complaint of multiple physical problems, with depressive features, in partial remission, versus depressive disorder, not otherwise specified, in partial remission. Dr. Lavid opined that Respondent Tenner is not disabled for the performance of her duties due to any psychiatric condition. In his opinion, Respondent Tenner did not present with any symptoms of major mental illness that would impair her ability to function in the workplace.

Respondent Tenner testified on her own behalf at the hearing and submitted Physicians' Reports on Disability from Dr. May San Wong and Dr. Virginia Chan. Both reports contained diagnoses of Fibromyalgia, Osteoarthritis and Degeneration of lumbar intervertebral disc. Both reports also concluded that Respondent Tenner was substantially incapacitated from the performance of her usual duties; however, neither report provided an explanation of the opinions.

The Administrative Law Judge (ALJ) determined that the credible medical evidence and opinion established that Respondent Tenner is not incapacitated for the performance of her duties by reason of any orthopedic, internal medicine or psychiatric condition. The ALJ noted that the medical professionals who examined Respondent Tenner after the filing of the disability application unanimously concluded, with respect to their respective specialties, that Respondent Tenner was able to perform the duties of her position.

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 Writ Petition in Superior Court seeking to overturn the Decision of the Board.

June 17, 2015



CHRISTOPHER PHILLIPS
Senior Staff Attorney