

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Allison V. Johnson (Respondent Johnson) was employed by the California Department of Transportation (CalTrans) as an Accounting Officer. By virtue of her employment, she is a state miscellaneous member of CalPERS, subject to Government Code section 21150.

Respondent Johnson submitted an application for service pending disability retirement, wherein she claimed her disability was on the basis of rheumatological conditions (fibromyalgia and arthritis) and a psychological condition (anxiety disorder).

CalPERS arranged for Respondent Johnson to be examined by Douglas Haselwood, M.D., a Board-Certified Rheumatologist and Kent Rogerson, a Board-Certified Psychiatrist. Both doctors testified as Independent Medical Examiners (IME) in this case. Dr. Haselwood and Dr. Rogerson reviewed Respondent Johnson's medical records, and prepared reports finding that Respondent Johnson was not substantially incapacitated from the usual and customary duties of her position as an Accounting Officer.

Accordingly, CalPERS denied Respondent Johnson's application for disability retirement. Respondent Johnson appealed this determination and a hearing was conducted on December 12, 2014 and August 21, 2015, by an Administrative Law Judge (ALJ) from the Office of Administrative Hearings.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law, Respondent Johnson has the burden of showing that she is substantially incapacitated from performing the usual and customary duties of her position as an Accounting Officer. Prophylactic restrictions and risk of possible future injury cannot support a finding of disability. (*Mansperger v. Pub. Employees' Ret. System* (1970) 6 Cal.App.3d 873; *Hosford v. Bd. Of Administration* (1978) 77 Cal.App.3d 854.)

CalPERS explained the hearing process to Respondent Johnson and the need to support her case with witnesses and documents. CalPERS provided Respondent Johnson with a copy of the Administrative Hearing Process pamphlet. CalPERS answered Respondent Johnson's questions and provided her with information on how to obtain further information on the process.

At the first hearing, Dr. Haselwood testified extensively. Dr. Haselwood's diagnoses were chronic complex, widespread musculoskeletal pain and dysfunction syndrome associated with a myriad of other somatic symptomatology representing the cumulative effect of (A) age appropriate osteoarthritis; (B) degenerative and discogenic disease in the lumbosacral spine; (C) nonspecific widespread myofascial discomfort with a hypervigilance for same; (D) obesity and physical deconditioning; and (E) a significant element of nonorganic amplification presumably related to chronic depression/anxiety associated with occupational and life stressors. He could not substantiate the diagnosis

of fibromyalgia syndrome and there was no evidence of an evolving systemic or inflammatory rheumatic condition. Dr. Haselwood explained that Respondent Johnson had the physical ability to perform the duties of an Accounting Officer.

Dr. Rogerson also testified. In the portion of his report entitled "Assessment," Dr. Rogerson opined that there are no specific job duties that Respondent Johnson is unable to perform because of a mental condition. She was not substantially incapacitated for her usual duties based on a psychiatric illness.

At the hearing, Respondent Johnson explained that she also was being treated for pain and also had orthopedic conditions. She did submit medical reports. As a result of her testimony, a second day of hearing was scheduled and Ms. Johnson agreed to be seen by an Orthopedic Specialist. Respondent Johnson was then sent for evaluation by Dr. Joseph Serra, a Board-Certified Orthopedic Surgeon.

Dr. Serra testified during the second day of hearing. Dr. Serra's impressions were back pain by history, probably early degenerative disc disease or mild osteoarthritis; chronic left hip pain with unknown etiology but possibly early arthritis; status post-gastric bypass; morbid obesity; history of anxiety, depression and panic attacks; and complaints of neck pain.

Dr. Serra opined that Respondent Johnson is not unable to perform her usual duties by reason of a physical condition. In his orthopedic opinion, she was not substantially incapacitated for the performance of her usual duties as an Accounting Officer. Dr. Serra concluded that Respondent Johnson was not putting forth her best effort in the examination and was exaggerating her subjective complaints to a significant degree.

The ALJ found that Respondent Johnson did not establish by competent, objective medical opinion, that at the time of her disability application she was permanently disabled or incapacitated from performing the usual duties of an Accounting Officer. Accordingly, the ALJ denied Respondent Johnson's appeal.

Pursuant to Government Code section 11517(c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends that the word "industrial" be deleted before the words "disability retirement" on pages one, two, eight, nine and ten of the Proposed Decision.

The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision, as modified.

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.

October 21, 2015


for JEANLAURIE AINSWORTH
Senior Staff Attorney