

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Carol Gonzales (Respondent) applied for industrial disability retirement based on orthopedic (bilateral wrist/hand, right elbow) conditions. By virtue of her employment as a Licensed Vocational Nurse (LVN) for Respondent Pleasant Valley State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR), she was a state safety member of CalPERS. CalPERS determined that Respondent was not disabled. Respondent appealed this determination. A hearing was completed on August 26, 2015. Respondent was represented by counsel at the hearing.

In March 2011, Respondent developed numbness and tingling in her right hand. In August 2011, she was referred to a workers' compensation clinic for evaluation. In November 2011, Respondent had right carpal tunnel release surgery. In May 2012, Respondent had a second right carpal tunnel release surgery.

Respondent testified that she is unable to perform the essential functions of her job as an LVN because of pain, limited grip strength, lack of fine motor skills and manual dexterity.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Joseph Serra. Dr. Serra interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. He also performed a comprehensive IME examination. Dr. Serra found no evidence of atrophy in Respondent's shoulders, upper arms, forearms or hands. He found Respondent's range of motion in the forearms to be normal; somewhat limited in the left wrist during dorsiflexion with resistance; and normal in all digits. Jamar measurements of grip strengths were normal.

Dr. Serra opined that there are no specific job duties that Respondent is unable to perform because of her condition. He found that Respondent is not substantially incapacitated to perform her job duties as an LVN, and that she had no substantial incapacity or disability present.

At the hearing, Dr. Serra testified to his examination and report. Dr. Serra's medical opinion is that Respondent is not substantially disabled, even if she might be experiencing some pain. Dr. Serra believes Respondent exaggerates her pain complaints at all times.

Respondent testified on her own behalf. She did not call any physicians or other medical professionals to testify.

The Administrative Law Judge (ALJ) found no cause exists to grant Respondent's application for industrial disability retirement. The ALJ found that Respondent bears the burden to show by a preponderance of evidence (based on competent medical

evidence) that her symptomology renders her unable to perform her usual job duties. The ALJ found that Respondent failed to carry her burden of proof. The ALJ found that Respondent did not establish by competent, objective medical opinion, that, at the time of application, she was permanently disabled or incapacitated from performing her usual duties of an LVN for Respondent CDCR.

The ALJ concluded that Respondent failed to establish that she was substantially unable to perform her usual job duties as an LVN, and therefore, was not entitled to industrial disability retirement.

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.

November 18, 2015


ELIZABETH YELLAND
Senior Staff Attorney