

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

California Department of Corrections and Rehabilitation (CDCR) employed Carlotta Luna (Respondent Luna) as an Office Technician at Ventura Youth Correctional Facility. By virtue of her employment, Respondent Luna is an industrial state member of CalPERS subject to Government Code sections 20048 and 21151.

Respondent Luna claimed "uncontrolled Type 2 diabetes, fatigue, Priphral (sic) neuropathy; confusion, weakness, persistant (sic) leg pain and Neuropathy. Also being treated by Endocrinologist and Cardio doctor (Heart), side affects (sic) from medications."

CalPERS arranged for Respondent Luna to be examined by Independent Medical Examiners, Dr. Robert Weber, a Board-Certified Internist, with a specialty in cardiology, Dr. Sean Leoni, Board-Certified in Internal Medicine and pain management, and Dr. Stephen Wilson, Board-Certified in Neurology and Psychiatry. All three physicians found that Respondent Luna was not substantially incapacitated from the usual and customary duties of an Office Technician.

After reviewing Doctors Weber, Leoni and Wilson's reports and other medical evidence, CalPERS staff denied Respondent Luna's application for disability retirement. Respondent Luna appealed and a hearing was held on October 8, 2015.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), Respondent Luna has the burden of showing that she is substantially incapacitated from performing the usual and customary duties in her position as an Office Technician. 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 Luna and the need to support her case with witnesses and documents. CalPERS provided Respondent Luna with a copy of the Administrative Hearing Process Pamphlet. Respondent Luna represented herself. Prior to the hearing, CalPERS sent all exhibits to Respondent Luna and explained the procedure for submitting exhibits at hearing. CalPERS staff worked with Respondent Luna and she produced some medical records at the hearing, which were admitted.

At the hearing, Dr. Weber explained that Respondent Luna had "lousy diabetic control" and "chronic deconditioning" and noted that her position was a sedentary one. He also explained that her heart surgery in 2002 and 2005 had been successful and she had returned to work afterwards. He explained in detail why the cardiac condition and the diabetes were such that they limited her ability to perform the usual and customary

duties of her position. He found that Respondent Luna did not meet the requirements to qualify for disability retirement.

Dr. Leoni also explained at the hearing that Respondent Luna's insulin is "out of control" and that she should be taking insulin. He found that Respondent Luna's diabetes was not such that it limited her ability to perform the usual and customary duties of her position. He found that Respondent Luna did not meet the requirements to qualify for disability retirement.

Dr. Wilson, a Psychiatrist, administered two tests to Respondent Luna as part of his examination. He found she had some mild anxiety and "moderate depression." He opined that Respondent Luna was overly focused on the side effects of the medications. His opinion was that on a psychiatric basis, Respondent Luna was not substantially incapacitated from performing the usual and customary duties of her position.

Respondent Luna testified and confirmed verbally everything the three medical experts stated. She stated she could not sit for long periods. The Administrative Law Judge (ALJ) noted that Respondent Luna had no problem sitting for more than an hour at a time during the hearing. The ALJ found that Respondent Luna failed to meet her burden of proof and concluded that Respondent Luna'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



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