

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Lizabeth Ruiz (Respondent) was employed by the County of Santa Clara as an Eligibility Worker III. By virtue of her employment, Respondent is a local miscellaneous member of CalPERS.

Respondent applied for disability retirement based on orthopedic injuries. She described her limitations as "cervical spine- low lumbar problems carpal tunnel both hands and depression." She further explains "Limited range of motion, fine motor skills diminished, difficulty looking down loss of strength in both arms." "I also experience back spasms & headaches."

CalPERS arranged for Respondent to be examined by an Independent Medical Examiner, Dr. William Stearns a board-certified Orthopedist. Dr. Stearns concluded that Respondent's condition did not substantially incapacitate her from performing the usual and customary duties of her position as an Eligibility Worker III. Ms. Ruiz was also sent for Independent Medical Examination with Dr. Denis Clegg who is a Psychiatrist. He initially found she was not substantially incapacitated from her usual and customary duties on a psychiatric basis. After reviewing Dr. Stearn's and Dr. Clegg's reports and other medical evidence, staff denied Respondent's application for disability retirement.

Respondent appealed the decision and a hearing was held on December 19, 2012.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), Respondent has the burden of showing that she is substantially incapacitated from performing the usual duties in her position as a Eligibility Worker III. 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.)

Respondent was represented by counsel and provided medical documents to CalPERS as part of discovery. At hearing, Dr. Stearns and Ms. Ruiz testified.

Dr. Clegg also testified and explained that he changed his opinion as a result of medical reports he received after writing his December 1, 2010, report. Dr. Clegg now found Ms. Ruiz was substantially incapacitated from the usual and customary duties of her position at the time she filed for disability retirement.

The parties then stipulated that, based on Dr. Clegg's testimony, the Respondent was permanently incapacitated from the performance of her duties at the time she applied for disability retirement. The Administrative Law Judge (ALJ) prepared a decision reflecting the evidence presented at hearing.

The ALJ concluded that Respondent's appeal should be granted. 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. Since the Proposed Decision is favorable for the member, it is unlikely the respondents would file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.



JEANLAURIE AINSWORTH
Senior Staff Attorney