

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

America I. Nichols (Respondent) applied for disability retirement based on orthopedic (bilateral shoulders, bilateral hips, neck and coccyx) conditions. By virtue of her employment as a School Bus Attendant for Respondent Oceanside Unified School District (Respondent District), Respondent was a local miscellaneous member of CalPERS.

Respondent filed an application for service pending disability retirement on August 8, 2019, and she has been receiving service benefits since that time.

As part of CalPERS' review of Respondent's medical condition, Darren D. Thomas, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Thomas interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Thomas opined that Respondent did not have any orthopedic musculoskeletal diagnosis, and her subjective complaints of pain were exaggerated and inconsistent with objective findings. Dr. Thomas concluded that Respondent did not have an actual and present orthopedic impairment that rose to the level of substantial incapacity to perform her usual duties.

In order to be eligible for disability retirement, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the basis of the claimed disability must be permanent or of an extended duration which is expected to last at least 12 consecutive months or will result in death.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of her position. On December 3, 2021, CalPERS notified Respondent of its determination, and denied her disability application.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on July 7, 2022. Respondent did not appear at the hearing. Respondent District did appear at the hearing.

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

At the hearing, Dr. Thomas testified in a manner consistent with his examination of Respondent and the IME report. Dr. Thomas' testified that Respondent does not have any orthopedic musculoskeletal diagnosis. He believes that her original strain injury

from May 19, 2016, likely resolved within three months. Respondent exaggerated her subjective complaints which did not correspond with the objective findings. Therefore, Dr. Thomas' competent medical opinion is that Respondent is not disabled.

Jolie Napier-Vea, Director of Classified Human Resources for Respondent District testified that Respondent left District employment because she relocated and decided not to return. Respondent did not leave work due to a medical condition. The District opposed granting Respondent disability.

Respondent did not appear at the hearing and did not present any evidence in support of her claim.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent bore the burden of proof to show that she was substantially incapacitated to perform her usual job duties. Dr. Thomas credibly testified that Respondent did not have any disabling orthopedic condition, and her complaints of pain were exaggerated. Additionally, she complained of having no shoulder motion, but Dr. Thomas noted that she was able to move her shoulder later in the exam. The ALJ concluded that Respondent failed to establish she was permanently disabled or incapacitated from performing her regular and customary job duties and that she was not eligible for disability retirement.

For all the above reasons, staff argues that the Proposed Decision should be adopted by the Board.

September 21, 2022

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Senior Attorney