

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

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

Robert Cummings (Respondent) was employed as a Senior Computer Lab Technician by the Glendale Community College District (District). By virtue of his employment, Respondent was a local miscellaneous member of CalPERS. Respondent submitted an application for disability retirement on the basis of claimed psychological, internal and orthopedic conditions. CalPERS reviewed medical reports regarding Respondent's condition. CalPERS also reviewed a description of Respondent's usual and customary job duties. Respondent was evaluated by three Independent Medical Examiners (IMEs), all of whom prepared written reports which contained their observations, findings and conclusions. All three IMEs expressed an opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of a Senior Computer Lab Technician. CalPERS denied Respondent's application for disability retirement. Respondent appealed CalPERS' determination and a hearing was held on September 27, 2012.

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 and uncertain duration.

At the hearing, the Administrative Law Judge (ALJ) determined that Respondent had received proper notice of the hearing. Respondent did not appear at the hearing. The matter proceeded as a default, pursuant to Government Code section 11520.

Alexander Raskin, M.D., is a board-certified Orthopedic Surgeon. The ALJ received into evidence and considered the contents of Dr. Raskin's written report regarding his examination of Respondent and review of medical reports. Dr. Raskin concluded that Respondent could perform his regular work duties and was not substantially incapacitated from performing the usual and customary duties of a Senior Computer Lab Technician.

Jane Y. Chung, M.D. is board-certified in Psychiatry. The ALJ received into evidence and considered the contents of Dr. Chung's written report regarding her examination of Respondent and review of medical reports. Dr. Chung concluded that, from a psychological perspective, Respondent was not substantially incapacitated from performing his usual and customary duties.

Anitha Mitchell, M.D. is board-certified in Internal Medicine. The ALJ received a copy of Dr. Mitchell's written report into evidence. The ALJ also considered Dr. Mitchell's testimony at the hearing, which she characterized as being "credible." Dr. Mitchell offered her opinion that Respondent was not substantially incapacitated from performing his usual and customary duties.

After considering all of the evidence and testimony, the ALJ found that the competent medical evidence did not support a finding that Respondent was substantially incapacitated from performing his usual and customary duties. The ALJ denied Respondent's appeal. 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 motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

December 12, 2012

  
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RORY J. COFFEY  
Senior Staff Attorney