

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

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

Respondent Brenda Stevenson (Respondent Stevenson), a Parole Agent I at the Department of Corrections, Parole and Community Services Division, filed an application for industrial disability retirement due to cervical radiculopathy (neck, back and left shoulder pain).

As a parole agent, Respondent Stevenson managed a caseload of 70 to 80 parolees. This involved spending an average of six hours per day in the field. She visited parolees at their homes and, on occasion, would have to disarm, subdue and apply restraints. She admitted that, when she expected to make an arrest, she would take another agent along with her. In more than three years that she has been a Parole Agent, she testified that she has never been required to physically restrain a parolee alone. She stated that her injury did not occur in the field, but when she was lifting and moving heavy boxes in her office and felt a pull in her left shoulder area.

In order to be eligible for disability retirement, an individual must demonstrate, through competent medical evidence, that he or she is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition that is the basis for the claimed disability must be permanent or of an uncertain and extended duration.

CalPERS relied on the opinion of independent medical evaluator (IME), John Lang, M.D. to deny Respondent Stevenson's application for industrial disability retirement. Dr. Lang examined Respondent Stevenson, reviewed x-rays and MRIs taken by her physician at Kaiser, and reviewed medical reports submitted in the workers' compensation case. Dr. Lang found that Respondent Stevenson had full range of cervical spine motion and negative findings on neurological tests that he performed. He concluded that her spine condition was stable, and that although Respondent Stevenson might have some occasional discomfort while performing her duties, she was not substantially incapacitated from performing the duties of her position as a Parole Agent I.

Respondent Stevenson appealed the denial and a hearing was held before an Administrative Law Judge (ALJ). The ALJ denied Respondent Stevenson's appeal. However, the Board of Administration remanded the matter to staff for assignment of a second IME.

CalPERS sent Respondent Stevenson to a second IME, J. Hearst Welborn, M.D., who determined that Respondent Stevenson exhibited no neurologic loss or weakness in her cervical spine, nor any significant stenosis on her cervical spine MRI. He concluded that her cervical condition "only mildly interfered with her ability to use her neck," and that she was not incapacitated for the performance of her duties. Dr. Welborn was present to testify during the remand hearing.

Following the remand hearing, a different ALJ again concluded that Respondent Stevenson's appeal should be denied. She noted that Dr. Welborn's conclusions were consistent with those of the prior IME that, Respondent Stevenson might experience discomfort if she were to return to work, but her symptoms would not preclude her from doing her job. The Proposed Decision is supported by the law and the facts. Staff argues that the Board should 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.

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