

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

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

Respondent Anthony Meadows (Respondent) was employed by Sacramento Municipal Utility District (SMUD) as a Meter Reader. His job entailed reading electric meters and recording electricity consumption, by traveling a specified route each day.

On June 11, 2008, Respondent noted a vandalized meter cabinet. He was verifying the meter number, when a gust of wind blew a panel on the meter cabinet closed and the panel exploded. Respondent was thrown to the ground. Testimony showed that an electricity arc had startled Respondent, but the arc did not make contact with him. He was sent to emergency services, but released to full duty the same day.

On December 16, 2009, SMUD filed an application for disability retirement on Respondent's behalf, because he had been off work for over 6 months.

CalPERS sent Respondent for an Independent Medical Examination (IME) with Dr. Floyd Fortuin (board-certified Neurologist). Dr. Fortuin examined Respondent, reviewed Respondent's medical records, and provided his IME report to CalPERS.

Dr. Fortuin's IME report and testimony at hearing established that in his medical opinion, Respondent is not substantially incapacitated for the performance of his usual job duties as a meter reader. Dr. Fortuin found Respondent was able to perform all his job duties, and he did not believe that Respondent was precluded from returning to work due to any physical or mental condition.

SMUD Meter Reader Supervisor (Respondent's supervisor) and SMUD Senior Human Resources Analyst provided testimony regarding Respondent's job duties and workers' compensation claim. According to SMUD witness testimony, Respondent was placed on light duty for approximately 90 days. He then was placed on full duty, but had the restriction of not lifting more than 40 pounds. According to SMUD payroll records, Respondent never returned to work.

Respondent also testified at hearing. Respondent claimed to be feeling constant neck pain, constant ringing of the ears, vertigo, sleepwalking, and pain in his hands and shoulders. He claimed that one time he was sleepwalking, and set his kitchen on fire. However, Respondent never sought medical treatment for any of these conditions. Respondent did not provide any medical records or reports to corroborate his testimony. He did not provide any evidence to support his claims.

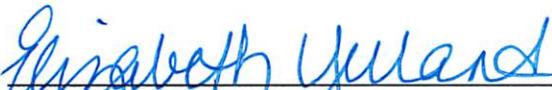
The Administrative Law Judge (ALJ) concluded that Respondent has the burden of proof to show entitlement to disability retirement. The ALJ found that Respondent did not present any medical evidence to establish that he has a neurological disability that incapacitates him from performing his usual duties. Thus, Respondent failed to prove his case. The sole medical testimony was provided by Dr. Fortuin. Dr. Fortuin's medical examination and report do not support Respondent's application for disability

retirement. Dr. Fortuin opines that Respondent is not substantially incapacitated for the performance of his usual duties.

The ALJ concluded that Respondent'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.

February 21, 2013.

  
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ELIZABETH YELLAND  
Senior Staff Attorney