

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

## STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

The hearing on this case was completed April 10, 2013. Following the hearing, a Proposed Decision was issued on May 28, 2013. The Decision denied Rory M. Mayberry's (Respondent) application for industrial disability retirement. The Board voted to adopt the Proposed Decision on August 21, 2013. Respondent submitted this Petition for Reconsideration on September 16, 2013.

Respondent was employed by the Department of Mental Health, Vacaville Psychiatric Program as a Senior Medical Assistant. On October 7, 2010, Respondent filed for industrial disability retirement due to orthopedic conditions.

After considering all the evidence, the Administrative Law Judge (ALJ) found that Respondent did not establish through competent medical evidence that his orthopedic condition substantially incapacitates him from the performance of his usual job duties.

CalPERS presented the testimony of its Independent Medical Examiner, Dr. McCoy. Dr. McCoy's reports and testimony comprised the only competent and direct medical evidence in this case. Dr. McCoy recognized that Respondent experienced some discomfort and difficulty performing certain activities. Nevertheless, Dr. McCoy opined that there are no job duties that Respondent could not perform because of his physical condition. Dr. McCoy testified that Respondent is not substantially incapacitated for the performance of his job duties. Respondent presented no competent medical evidence to the contrary.

Similarly, Respondent gave no support for his Petition for Reconsideration. Respondent was represented by counsel at his hearing. He capably and fully presented his case and documentary evidence at hearing. He cross-examined Dr. McCoy.

Respondent presumably disagrees with the ALJ's findings of fact, legal analysis and decision. The Proposed Decision documents that evidence was taken on the underlying facts, statutes pertaining to industrial disability retirement and Respondent's medical condition. Relevant exhibits were submitted for consideration by the ALJ. The ALJ simply found against Respondent. Respondent has not raised any new evidence or change in circumstances which would warrant a Petition for Reconsideration.

For all of the reasons stated above, staff argues the Board deny the Petition for Reconsideration and uphold its Decision. Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. Respondent may file a writ petition in superior court seeking to overturn the Decision of the Board.

October 16, 2013

  
for ELIZABETH YELLAND  
Senior Staff Attorney