

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

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

Bonnie Matthews (Respondent) is currently employed by the California Department of Motor Vehicles as a Senior Vehicle Technician and is a miscellaneous member of CalPERS.

Respondent submitted an application for disability retirement on the basis of orthopedic (back, sciatica, bilateral knees, carpal tunnel) and rheumatologic (arthritis) conditions.

CalPERS reviewed written descriptions of Respondent's job duties and relevant medical reports submitted by Respondent, particularly reports prepared by Maury Harwood, M.D. and Richard Badke, M.D. CalPERS also sent Respondent for Independent Medical Examinations (IME) with Orthopedic Surgeon, William Stearns M.D., and Rheumatologist, Umesh Sab, M.D. Based on relevant medical evidence, CalPERS determined Respondent was not substantially incapacitated from performance of her duties as a Senior Vehicle Technician at the time her application for disability retirement was filed.

Respondent appealed CalPERS' determination and a hearing, as to whether Respondent is substantially incapacitated from performing her usual and customary job duties, was held on September 24, 2013.

To be eligible for disability retirement, competent medical evidence must demonstrate the member is substantially incapacitated from performing the usual and customary duties of her position. Usual and customary duties are defined as duties that are actually performed by the member. Furthermore, the injury and condition that is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to meet her burden of proof with witnesses and documents. CalPERS answered other relevant questions presented by Respondent. CalPERS provided Respondent a copy of the administrative hearing process handbook. Counsel also referred Respondent to the Office of Administrative Hearings (OAH) website for information regarding self-representation.

Respondent testified at the hearing regarding her inability to perform her usual and customary job duties due to severe pain and physical limitations. Respondent offered further medical reports from her treating physicians and workers' compensation physicians to substantiate her claims. Respondent also stressed she continued to work due to financial hardship.

Julie Ferreira, Respondent's supervisor, testified Respondent primarily performed light office work, within her medical restrictions. Dr. Stearns testified that Respondent had mild lumbar spondylosis, probable bilateral carpal tunnel syndromes, and bilateral total

knee replacements. Dr. Stearns opined that Respondent's physical restrictions, however, did not prevent her from performing light office work.

Dr. Sab testified Respondent had degenerative disc disease, generalized osteoarthritis and bilateral carpal syndrome, and bilateral trochanteric bursitis. Dr. Sab opined Respondent was temporarily disabled, for approximately six months, when he examined her in 2009. Dr. Stearns and Dr. Sab reviewed additional medical reports provided by Respondent regarding her medical condition. Both experts expressed that their opinion did not change and that Respondent was not permanently incapacitated from performing her actual job duties.

The Administrative Law Judge (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.

December 18, 2013



PREET KAUR  
Staff Attorney