

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

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

Sandra Woody (Respondent) was employed by the Department of Developmental Services as a Psychiatric Technician and was a miscellaneous member of CalPERS.

Respondent submitted an application for Industrial Disability Retirement on the basis of orthopedic (left side of the neck, left shoulder, arm elbow, and hand) conditions.

CalPERS reviewed written descriptions of Respondent's job duties and relevant medical reports submitted by Respondent, particularly reports prepared by William Previte, D.O., Charles Lewis III, M.D., and Andrew Whyman, M.D. CalPERS also sent Respondent for an Independent Medical Examination (IME) with Orthopedic Surgeon Ernest Miller, M.D. Based on relevant medical evidence, CalPERS determined Respondent was not substantially incapacitated from performance of her duties as a Psychiatric Technician at the time her application for Industrial Disability Retirement was filed.

Respondent appealed CalPERS' determination and a hearing, to determine whether Respondent is substantially incapacitated from performing her usual and customary job duties, was held on December 5, 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 a work-related injury she suffered on November 9, 2005. Respondent offered further medical reports from her treating physicians and workers' compensation physicians to substantiate her claims.

Lori Duckworth, Respondent's former supervisor, testified regarding the physical demands of Respondent's position. CalPERS submitted medical evidence concerning Respondent's condition, particularly Dr. Miller's report stating Respondent is not substantially incapacitated from performing her usual and customary job duties.

The Administrative Law Judge (ALJ) reviewed the medical evidence and found

Dr. Miller's opinion, that Respondent is not substantially incapacitated, to be most persuasive. The ALJ reasoned that contrary medical opinion, of Respondent's treating physician, was not supported by evidence. Furthermore, the ALJ held that medical records submitted by Respondent do not contradict Dr. Miller's opinion. Respondent's medical evidence merely demonstrated that Respondent has some physical restrictions, but failed to prove Respondent could not perform the essential functions of her job.

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.

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PREET KAUR  
Staff Attorney