

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Sylvia Valdez (Respondent) applied for industrial disability retirement based on orthopedic conditions (right ankle/foot, right wrist/hand, fingers, back, neck and right knee). By virtue of her employment as an Aide II for Respondent Bakersfield City Elementary School District (Respondent District), she was a local miscellaneous member of CalPERS. CalPERS determined that Respondent was not disabled, to which she appealed. A hearing was completed on January 8, 2014. Respondent was not represented by counsel at the hearing.

Prior to hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process handbook. CalPERS answered Respondent's questions, and provided her with information on how to obtain further information on the process.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Mohinder Nijjar. Dr. Nijjar interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. He also performed a comprehensive IME examination.

Dr. Nijjar examined Respondent's low back, right foot and ankle, right knee, wrists and hands. Dr. Nijjar concluded that Respondent had sustained some work injuries in the past, but she had always been able to return to work. Dr. Nijjar found no acute distress, normal ranges of motion, normal sensation and motor strength, no atrophy, no nerve damage or impairment and no evidence of carpal tunnel syndrome. The only thing Dr. Nijjar found was minimal impairment, due to a slight limitation in her low back range of motion. Dr. Nijjar does not believe that this slight impairment rises to the level of substantial incapacity to perform her duties as an Aide II.

Following his examination and review of documentation, Dr. Nijjar opined that in his medical opinion, Respondent is not substantially incapacitated from performance of her usual job duties. He believes that there are no job duties Respondent is unable to perform because of her physical condition.

At the hearing, Dr. Nijjar testified to his examination and reports. Dr. Nijjar's medical opinion is that Respondent is not substantially disabled, even if she is experiencing some limitation in the range of motion in her low back.

Respondent testified on her own behalf. She did not call any physicians or other medical professionals to testify.

The Administrative Law Judge (ALJ) found that Respondent bears the burden to show by a preponderance of evidence (based on competent medical evidence) that her symptomology renders her unable to perform her usual job duties. The ALJ found that

Respondent failed to carry her burden of proof. The ALJ found that she did not establish by competent, objective medical opinion, that, at the time of application, she was permanently disabled or incapacitated from performing her usual duties as an Aide II for Respondent District. The ALJ found that Respondent provided no objective, competent medical evidence to support her claim of disability.

The ALJ concluded that Respondent failed to establish that she was substantially unable to perform her usual job duties, and therefore, was not entitled to industrial disability retirement.

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.

March 19, 2014

  
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ELIZABETH YELLAND  
Senior Staff Attorney