

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

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

Respondent Raquel Nadal-Rodriguez (Respondent) applied for disability retirement on the basis of an orthopedic condition ("lower back problems"). By virtue of her employment as a Physical Education Attendant with the Oakland Unified School District (Respondent OUSD), she was a state miscellaneous member of CalPERS. A hearing was completed on December 9, 2013.

Prior to hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided her with a copy of the administrative hearing process handbook. CalPERS answered her questions, and provided her with resources to obtain further information. While CalPERS did object to some of the documents Respondent introduced at hearing, all Respondent's exhibits were admitted into evidence and considered by the Administrative Law Judge (ALJ). Respondent also provided testimony on her own behalf.

As part of CalPERS review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to William R. Sterns, M.D., a board-certified Orthopedic Surgeon. Dr. Sterns interviewed Respondent, and obtained Respondent's summary of her medical history, treatment, work history, recreational activities, and present complaints. Dr. Sterns also reviewed Respondent's prior medical records, took an oral history from Respondent, and performed a comprehensive physical examination.

Upon examination, Dr. Sterns found no objective evidence of nerve compression but did find evidence of symptom embellishment, in that some of Respondent's complaints or responses to examination had no physiologic basis. Dr. Sterns concluded that Respondent was temporarily disabled from performing her usual duties, and would remain so for the next three months.

Approximately five months after performing the examination and issuing the report, Dr. Sterns reviewed medical records provided by Respondent that postdated his IME examination. While Dr. Sterns changed his opinion that Respondent's ankle pain was referred from her back, he nevertheless concluded in a Supplemental IME report that he found no reason to consider Respondent incapacitated from her regular work due to her left ankle or lower back injuries. Dr. Sterns concluded that Respondent was temporarily disabled from October 13, 2010, through January 13, 2011, but was not permanently incapacitated from performing her usual duties.

Respondent did not offer any medical testimony at hearing. Rather, she introduced reports from Dr. Camenson and Dr. Noralahi. The ALJ found that the opinions of Dr. Camenson and Dr. Noralahi were not as persuasive as the opinion of Dr. Sterns and found that Respondent failed to meet her burden of proof and establish that her disability is permanent or of an extended and uncertain duration.

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.

April 16, 2014

A handwritten signature in cursive script, appearing to read "C. Phillips", written in black ink.

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CHRISTOPHER C. PHILLIPS  
Staff Attorney