

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

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

Respondent Stephanie Robert (Respondent) applied for disability retirement based on a neurocardiogenic syncope (fainting spells of unknown origin) condition. By virtue of her employment as a Transportation Aide for Respondent Kern County School District (Respondent District), she was a local miscellaneous member of CalPERS. CalPERS determined that Respondent was not disabled, and she appealed. A hearing was completed on February 25, 2014. Respondent represented herself at 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 Cardiologist Dr. Harcharn Chann. Dr. Chann interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her fainting spells, past and present complaints, and reviewed her past medical records. He also performed a comprehensive IME examination, but testified that it is impossible to determine the cause of neurocardiogenic syncope.

Dr. Chann explained that neurocardiogenic syncope is usually diagnosed based on patient's self-reporting of having suffered fainting spells. Dr. Chann noted that Respondent's medical records document her previously suffered fainting spells, and that previous testing results for neurocardiogenic syncope were consistent with her having the condition.

Dr. Chann gave inconsistent medical opinions in his written reports and testimony at hearing. In his initial IME report, he opined that Respondent was disabled from her job duties. But in a subsequent addendum report, Dr. Chann wrote that Respondent was stable and could return to normal job duties. However, Dr. Chann testified at hearing that he felt Respondent could not safely perform her job duties due to the unpredictability of her fainting spells. He also testified that his opinion in the subsequent addendum report was based on the assumption that her employer deemed one or two fainting spells each year to be an acceptable risk, a proposition with which he does not agree. Finally, Dr. Chann testified that he "would be very hesitant" to have his own children ride on Respondent's bus.

Respondent testified on her own behalf, and also called a retired bus driver for Respondent District with whom she had worked in the past. The retired bus driver testified that she had observed Respondent faint on her bus, and would not want Respondent to be assigned to her bus due to safety reasons. The bus driver explained that some of the students in wheelchairs squirm when riding the lift to the bus, which requires the Transportation Aide to hold on to the student and wheelchair while operating the lift. If Respondent were to faint while operating the lift, there would be

great potential for both Respondent and the student to fall off of the lift and be hurt. Respondent did not call any physicians or other medical professionals to testify.

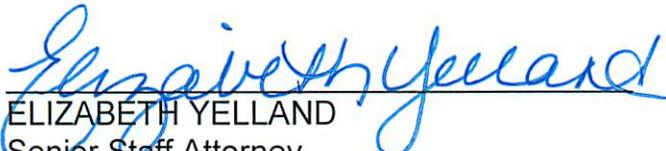
The Administrative Law Judge (ALJ) found that Respondent bears the burden to show by a preponderance of evidence (based on competent medical evidence) that her symptomology renders her unable to perform her usual job duties. The ALJ found that Respondent carried her burden of proof, based on Dr. Chann's testimony and the testimony of the retired bus driver. The ALJ found that Respondent did establish by competent, objective medical opinion, that, at the time of application, she was permanently disabled or incapacitated from performing the usual and customary duties of a Transportation Aide for Respondent District.

The ALJ concluded that the persuasive medical evidence established that Respondent is disabled, i.e. substantially incapacitated for the performance of her usual duties as a Transportation Aide with Kern County School District due to neurocardiogenic syncope.

Based on that conclusion, the ALJ granted Respondent's appeal. 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 most likely will not file a Writ Petition in Superior Court seeking to overturn a favorable Decision of the Board.

April 16, 2014

  
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