

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

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

Respondent Marion Bannister (Respondent) was approved for Industrial Disability Retirement on September 16, 2009, based on an orthopedic (left shoulder) condition. In 2013, CalPERS determined that Respondent was no longer disabled from the performance of her duties as a Stationary Engineer with Respondent California Department of Corrections and Rehabilitation, Deuel Vocational Institution, and that she should be reinstated. Respondent appealed. The hearing on Respondent's appeal was completed on July 17, 2014.

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

Dr. Serra examined Respondent's shoulders, arms and wrists. The only thing Dr. Serra found was some tenderness to the touch in the left shoulder, and occasional "clicking" sounds when Respondent's left arm was abducted 90 degrees and rotated. He found no atrophy, good range of motion in both shoulders, good reach in both arms and excellent active strength in her biceps, triceps wrists and hands.

Following his examination and review of all documentation, Dr. Serra opined that Respondent is not substantially incapacitated from performance of her usual job duties as a Stationary Engineer. He believes that there are no job duties Respondent is unable to perform because of her physical condition. Based on Dr. Serra's report and opinion, CalPERS determined that Respondent should be reinstated from Industrial Disability Retirement. Respondent filed a timely appeal of this determination.

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.

At the hearing, Dr. Serra testified about his examination and reports. Dr. Serra's competent medical opinion is that Respondent is not substantially incapacitated.

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 CalPERS bears the burden to show by a preponderance of the evidence (based on competent medical evidence) that Respondent was no longer substantially incapacitated and should be reinstated to her former position (Gov. Code sections 21191 and 21192). The ALJ found that CalPERS met its burden of proof, based on Dr. Serra's testimony. The ALJ further found that

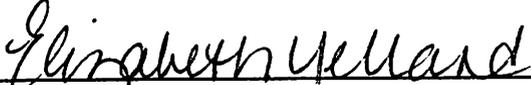
Respondent provided no objective, competent medical evidence to support her claim of continued disability.

The ALJ concluded that Respondent failed to establish that she was substantially unable to perform her usual job duties, and therefore, was no longer entitled to Industrial Disability Retirement.

The ALJ concluded that Respondent's appeal should be denied and that she should be reinstated to her former usual job duties as a Stationary Engineer. 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.

October 15, 2014.

  
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ELIZABETH YELLAND  
Senior Staff Attorney