

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

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

Respondent Deborah Montoya (Respondent) applied for disability retirement on the basis of lower back and upper thigh conditions. By virtue of her employment as a Cook/Baker for the Pasadena Unified School District (School District), Respondent was a miscellaneous member of CalPERS. A hearing was completed on September 25, 2014.

Prior to the 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 clarified 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 Blair C. Filler, M.D., board-certified Orthopedic Surgeon. Dr. Filler interviewed Respondent, and obtained Respondent's summary of her medical history, treatment, work history and present complaints. Dr. Filler also reviewed Respondent's medical records, took an oral history, reviewed x-rays and an MRI provided by Respondent and x-rays that Dr. Filler arranged to have taken, and performed a comprehensive physical examination.

Dr. Filler prepared a report that indicated Respondent is not substantially incapacitated in the performance of her usual duties as a Cook/Baker for the School District. Dr. Filler's opinion is based on his examination of Respondent which resulted in no objective findings to substantiate her subjective complaints. For example, when Respondent performed the straight leg raising test in a standing position, she reported no pain; but when performing the same test supine, she reported pain in her lower back. According to Dr. Filler, the results should have been the same regardless of whether Respondent was standing or supine.

Dr. Filler prepared a supplemental report after he was provided additional medical records related to Respondent's workers' compensation claim. Dr. Filler's review of the additional medical records did not alter his conclusions set forth in the prior report.

At the hearing, Dr. Filler testified about his reports, the examination he performed, and his expert opinion regarding Respondent's capacity for the performance of her normal duties.

Respondent did not offer any medical testimony at the hearing. Rather, she testified about her physical limitations and the interactive process with the School District. Respondent did not offer any documentary evidence to support her testimony.

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.

December 17, 2014



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CHRISTOPHER PHILLIPS  
Staff Attorney