

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

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

Respondent Bahram Z. Foadi (Respondent Foadi) applied for service pending industrial disability retirement on the basis of a cardio-vascular (heart) condition. By virtue of his employment as a Transportation Engineer with Respondent Department of Transportation District 4 (DOT), Respondent Foadi was a miscellaneous member of CalPERS.

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

Despite proper notice being given to Respondent Foadi and Respondent DOT, no appearances were made at the October 7, 2015 hearing by either respondent. Due to the failure to appear at the hearing, defaults of the respondents were taken by the Administrative Law Judge (ALJ). CalPERS made arguments, called a witness, and introduced documentary evidence, including medical reports, at the hearing.

As part of CalPERS' review of his medical condition, Respondent Foadi was evaluated by an Independent Medical Examiner (IME). Robert B. Weber, M.D., a Fellow of the American College of Cardiology and certified specialist in cardiovascular disease, examined Respondent Foadi, wrote a report, reviewed medical records and testified at the hearing. Dr. Weber opined that Respondent Foadi was able to perform all the job duties that were reviewed and that Respondent Foadi was not substantially incapacitated from the performance of his usual duties.

The ALJ found that Dr. Weber offered a comprehensive review and analysis and amply supported his opinion that Respondent Foadi was not substantially incapacitated from performing his usual duties.

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 motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

December 16, 2015

  
for CHRISTOPHER PHILLIPS  
Senior Staff Attorney