

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

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

Respondent Jerry Beasley (Respondent) applied for a disability retirement based on an orthopedic condition (right knee). He was a Building Services Engineer for Respondent California State University, Fresno (Respondent Fresno State).

On May 11, 2012, Respondent was descending a ladder at work when his left foot either slipped off one of the rungs or missed it altogether. While he did not fall from the ladder, he placed the majority of his weight on his right hip and leg, and caused hyperflexion of both. He immediately felt pain in his right hip and leg, and reported his injury to his supervisor. He filed a workers' compensation claim.

As part of CalPERS' review of his medical condition, Respondent was sent for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Daniel D'Amico. Dr. D'Amico interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed medical records. Dr. D'Amico also performed a comprehensive IME examination. Dr. D'Amico concluded that Respondent may have some pain and may limp from time to time, but that he limps "only because he wants to favor the right knee. He does not need to limp." Dr. D'Amico found slightly diminished range of motion in Respondent's right knee, but neither knee showed any sign of instability. Dr. D'Amico also concluded that Respondent did not cooperate with the prescribed proper rehabilitation. Dr. D'Amico found that Respondent could do his job, but that sometimes he would experience some pain.

Dr. D'Amico opined that there are no specific job duties that Respondent is unable to perform because of his condition. He found that Respondent is not substantially incapacitated to perform his job duties as a Building Services Engineer, and that he had no substantial incapacity or disability. CalPERS thereafter determined that Respondent was not entitled to a disability retirement. Respondent appealed this determination. A hearing was completed on October 14, 2015.

Prior to the hearing, CalPERS explained the hearing process to Respondent 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's questions, and provided him with information on how to obtain further information on the process.

Respondent testified that he is unable to perform the essential functions of his job because of pain and numbness. He also presented various medical reports from his workers' compensation and treating physicians, all of which were accepted on a limited basis as hearsay. He did not call any physicians or other medical professionals to testify.

At the hearing, Dr. D'Amico testified to his examination and report. Dr. D'Amico confirmed that in his medical opinion Respondent is not substantially disabled, even if he might be experiencing some pain.

The Administrative Law Judge (ALJ) found no cause exists to grant Respondent's application for disability retirement. The ALJ found that Respondent bears the burden to show by a preponderance of evidence (based on competent medical evidence) that his symptomology renders him unable to perform his usual job duties. The ALJ found that Respondent failed to carry his burden of proof. The ALJ found that Respondent did not establish by competent, objective medical opinion, that, at the time of application, he was permanently disabled or incapacitated from performing the usual duties of a Building Services Engineer for Respondent Fresno State.

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.

February 18, 2016

  
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ELIZABETH YELLAND  
Senior Staff Attorney