

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

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

Marisol Romo (Respondent Romo) was employed by the Tulare County Child Care Services as a Teacher Assistant and is a miscellaneous member of CalPERS.

Respondent Romo submitted an application for disability retirement on the basis of orthopedic (lower back and degenerative disc disease) conditions.

CalPERS reviewed written descriptions of Respondent Romo's job duties and relevant medical reports submitted by Respondent Romo. CalPERS also sent Respondent Romo for Independent Medical Examination (IME) with Orthopedic Surgeon Joseph Serra, M.D.

Based on relevant medical evidence, CalPERS determined Respondent Romo was not substantially incapacitated from performance of her duties as a Teacher Assistant at the time her application for disability retirement was filed.

Respondent Romo appealed CalPERS' determination, and a hearing as to whether Respondent Romo is substantially incapacitated from performing her usual and customary job duties was held on December 16, 2015.

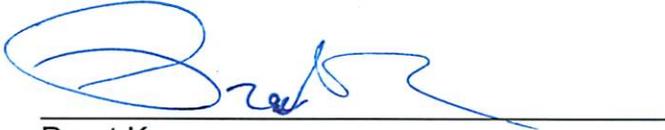
To be eligible for disability retirement, competent medical evidence must demonstrate the member is substantially incapacitated from performing the usual and customary duties of his or her position. Furthermore, the injury and condition that is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

Prior to the hearing, CalPERS explained the hearing process to Respondent Romo and the need to support her case with witnesses and documents. CalPERS provided Respondent Romo with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Romo's questions and clarified how to obtain further information on the process. Respondent Romo was present at the hearing and testified concerning her job duties and her inability to perform those duties.

The Administrative Law Judge (ALJ) concluded that Respondent Romo's appeal should be denied based on the persuasive testimony of Dr. Serra. The ALJ held that Respondent Romo failed to establish she is permanently disabled or incapacitated from performing her job duties on the basis of her orthopedic conditions. 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.

March 16, 2016

A handwritten signature in blue ink, appearing to read 'Preet Kaur', is written over a horizontal line. The signature is stylized and cursive.

Preet Kaur  
Senior Staff Attorney