

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

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

Respondent Antoinette Key (Respondent) applied for disability retirement based on a psychological condition. By virtue of her employment as an Office Technician for Respondent California Department of Corrections, Sierra Conservation Center (CDCR), she was a state miscellaneous member of CalPERS.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) by psychiatrist Andrea Bates., M.D. Dr. Bates interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Bates also performed a comprehensive IME. Dr. Bates opined that while Respondent previously had some significant depression and anxiety symptoms, those symptoms improved over time and were not disabling at the time of the IME. Dr. Bates opined that Respondent is not substantially incapacitated to perform her job duties as an Office Technician. After reviewing all medical documentation and the IME report, CalPERS determined that Respondent was not disabled.

Respondent appealed this determination. A hearing was completed on January 29, 2016. Respondent represented herself at hearing.

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 pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing, Dr. Bates testified in a manner consistent with her examination of Respondent and the report prepared after the IME. Dr. Bates' medical opinion is that Respondent is not substantially disabled, even if she might have some limitations as a result of a learning disability. Dr. Bates' opinion is that these limitations do not substantially incapacitate Respondent from performance of her usual duties as an Office Technician.

Respondent testified on her own behalf. She did not call any physicians or other medical professionals to testify. Respondent testified that beginning in April of 2010, she experienced increasing employment difficulties, and believed there was a campaign against her to convince her to resign. Respondent last worked on September 1, 2010. Respondent was seen by various physicians; however, she did not undergo any individual counseling or therapy sessions as a result of any psychological condition. Respondent testified that as a result of her psychological condition, she was unable to perform her usual duties as an Office Technician.

The Administrative Law Judge (ALJ) denied Respondent's appeal. The ALJ found that Respondent bears the burden to prove by a preponderance of evidence (based on competent medical evidence) that her psychological condition renders her unable to

perform her usual job duties. The ALJ found that Respondent failed to carry her burden of proof.

The ALJ concluded that Respondent is not permanently and substantially disabled or incapacitated from the performance of her job duties, and therefore, is not entitled to disability retirement.

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

April 20, 2016

A handwritten signature in blue ink that reads "Marquitta Seaborn". To the left of the signature is a small, stylized blue mark that looks like the letters "fn". A horizontal line is drawn across the signature, and below it, the name and title are printed in black text.

JOHN SHIPLEY  
Senior Staff Attorney