

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Julieta E. Acedillo (Respondent Acedillo) worked as a Licensing-Registration Examiner (LRE) for Respondent Department of Motor Vehicles (Respondent DMV). By virtue of his employment, Respondent Acedillo was a state safety member of CalPERS.

Respondent Acedillo applied for industrial disability retirement with CalPERS on the basis of orthopedic conditions (left shoulder and neck), which he claimed made him unable to work as a LRE for Respondent DMV. Respondent Acedillo's injuries arose during a vehicle accident on July 23, 2013, while Respondent Acedillo was administering a driving test. Respondent was taken off work for a few days, received physical therapy, and returned to work. To evaluate Respondent Acedillo's industrial disability retirement application, CalPERS referred Respondent Acedillo for an Independent Medical Examination (IME) with Doctor Bruce R. Huffer. Dr. Huffer issued a written report finding Respondent Acedillo was not, in his opinion, unable to perform the duties of a LRE for Respondent DMV. On the basis of this IME report, and a review of Respondent Acedillo's medical records and job duty statements, CalPERS denied Respondent Acedillo's industrial disability retirement application.

Respondent Acedillo appealed CalPERS' determination, exercising his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. The ALJ presided over a one-day hearing in Oakland, California on January 28, 2016. Counsel appeared on behalf of CalPERS. Respondent Acedillo represented himself. Respondent DMV did not appear.

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

Pursuant to the California Public Employees' Retirement Law (PERL), a CalPERS member who is incapacitated from the performance of his or her duties shall be retired for disability. (Cal. Gov. Code §21150(a).) The statute has been interpreted and applied to require a showing of substantial inability to perform the usual duties of the job. (See, e.g., *Mansperger v. Public Employees Retirement System* (1970) 6 Cal.App.3d 873, 876.) On-the-job discomfort does not qualify a member for disability retirement; risk of further or future injury is similarly insufficient. (*Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 862-64.) On appeal, it is the member's burden to prove substantial incapacity. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.)

At hearing, CalPERS presented the oral testimony and written IME report of Dr. Huffer. Dr. Huffer testified that he interviewed Respondent Acedillo, obtained a personal and

medical history, physically examined Respondent Acedillo and reviewed his medical and work records.

During examination, Respondent Acedillo told Dr. Huffer that his neck symptoms resolved shortly after the accident. His remaining complaint was soreness and aching in the left upper arm and shoulder. Respondent Acedillo had received no medical treatment for pain, and was not taking pain medication. Though Dr. Huffer noted limited range of motion in the left shoulder, an MRI report showed no significant abnormalities. Dr. Huffer characterized Respondent Acedillo's injuries as "relatively minor."

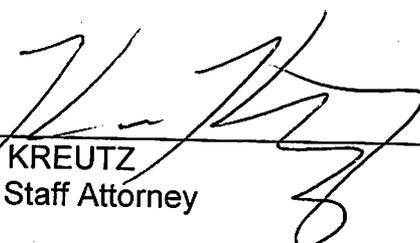
As a LRE for DMV, most of Respondent Acedillo's work involved administering driving tests. Physically, the LRE job required lifting up to ten pounds but never in excess. The job never required pushing, pulling, climbing, crawling, running, fine manipulation or power grasping.

Taking into account the industrial incident, the fact that Respondent returned to work with minor workplace accommodations, and the non-physical nature of the job, Dr. Huffer opined that Respondent Acedillo was not substantially incapacitated from performing his usual and customary duties as a LRE. Though Respondent Acedillo's limited range of motion precluded him from performing overhead activities, heavy lifting, as well as pushing and pulling, Dr. Huffer testified that these limitations would not impact Respondent Acedillo's regular job duties as a LRE. Respondent presented no evidence at the hearing, other than to say that he still experiences pain in his left shoulder.

The ALJ considered all the evidence, and credited as persuasive the report and testimony of Dr. Huffer. The ALJ noted Respondent Acedillo returned to full duties after the vehicle accident on a full-time basis until he retired. The ALJ concluded that Respondent Acedillo'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.

April 20, 2016



KEVIN KREUTZ
Senior Staff Attorney