

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Angie Wesco-Alexander (Respondent Wesco-Alexander) was employed by the State Compensation Insurance Fund (SCIF) as a program technician and is a miscellaneous member of CalPERS.

Respondent Wesco-Alexander submitted an application for disability retirement on the basis of orthopedic conditions (neck, cervical spine, bilateral wrists, shoulders and elbows).

CalPERS reviewed written descriptions of Respondent Wesco-Alexander's job duties and relevant medical reports submitted by Respondent Wesco-Alexander. CalPERS also sent Respondent Wesco-Alexander for an Independent Medical Examination with orthopedic surgeon, Ramin Rabbani, M.D. Based on relevant medical evidence, CalPERS determined Respondent Wesco-Alexander was not substantially incapacitated from performance of her duties as a program technician at the time her application for disability retirement was filed.

Respondent Wesco-Alexander appealed CalPERS' determination and a hearing as to whether Respondent Wesco-Alexander is substantially incapacitated from performing her usual and customary job duties was held on July 15, 2015 and August 3, 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 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.

The Administrative Law Judge (ALJ) first considered whether Respondent Wesco-Alexander was barred from applying for disability retirement on the basis of *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*). The ALJ, however, rejected this theory and held Respondent Wesco-Alexander was eligible to apply for disability retirement. She then analyzed whether Respondent Wesco-Alexander is substantially incapacitated from performing her customary job duties.

Respondent Wesco-Alexander was represented by counsel at the hearing.

Respondent Wesco-Alexander testified at the hearing regarding her job duties and her inability to perform her usual and customary job duties due to severe pain and physical limitations. Respondent Wesco-Alexander testified concerning her medical conditions and the medications she is prescribed due to the medical conditions. Respondent Wesco-Alexander offered an extensive number of medical reports from her treating physicians to substantiate her claims.

CalPERS offered the reports of Dr. Rabbani into evidence. The reports discussed Dr. Rabbani's examination of Respondent Wesco-Alexander and the diagnosis. In the reports, Dr. Rabbani opined that Respondent Wesco-Alexander was not restricted from performing any job functions from an orthopedic point of view.

The ALJ concluded that Respondent Wesco-Alexander's appeal should be denied because the totality of the evidence did not establish that Respondent Wesco-Alexander's medical conditions rendered her incapable of performing the usual and customary job duties of a program technician. 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.

May 18, 2016

A handwritten signature in black ink, appearing to read 'Preet-Kaur', written over a horizontal line.

**PREET-KAUR**  
Senior Staff Attorney