

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Jonathan Sullivan (Respondent) applied for disability retirement based on severe pain and weakness from his neck to his feet. On February 2, 2015, CalPERS determined that Respondent was not substantially incapacitated from the performance of his duties as a Maintenance Worker I for Respondent County of Colusa (Respondent County). Respondent appealed. A hearing was completed February 23, 2016. Respondent was represented by counsel during the hearing.

As part of CalPERS' review of Respondent's medical condition, Respondent was sent for an Independent Medical Examination (IME) to board certified orthopedic surgeon Dr. Harry Khasigian. Dr. Khasigian reviewed records including job descriptions and medical reports; interviewed Respondent; obtained Respondent's medical history; and conducted full physical examination. Dr. Khasigian then prepared an IME report, plus three supplemental reports based on additional medical documentation.

Dr. Khasigian concluded that Respondent did not have a disabling orthopedic condition. He noted that Respondent had a history of complaints of pain with multiple exams and treatment. Dr. Khasigian opined that Respondent's treatment had developed into narcotic abuse and habituation, and that the available medical reports were largely normal. Dr. Khasigian opined that there was a "high level of subjective claims", not borne out by objective medical evidence.

At the hearing, Dr. Khasigian testified to his examination and reports. Dr. Khasigian's medical opinion is that Respondent is not substantially incapacitated to perform the duties of Maintenance Worker I for Respondent County.

At hearing, Respondent testified that he worked a daily seven and a half hour work shift for Respondent County, including optional overtime. He loaded and unloaded all types of maintenance tools. He worked on ladders, built and climbed on scaffolds, painted, and worked with various chemicals.

The Administrative Law Judge (ALJ) found that Respondent bears the burden to show by a preponderance of the evidence (based on competent medical evidence) that he is substantially incapacitated. When all the evidence was considered, the ALJ found Dr. Khasigian's medical opinion to be more persuasive. The ALJ found that Respondent did not present medical evidence to support his claim for disability retirement.

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.

May 18, 2016.

  
ELIZABETH YELLAND  
Senior Staff Attorney