

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Staci Stenroos (Respondent Stenroos) worked as a Staff Services Manager I (manager) for Respondent California State Teachers' Retirement System (Respondent CalSTRS). By virtue of her employment, Respondent Stenroos was a state miscellaneous member of CalPERS.

Respondent Stenroos applied for disability retirement with CalPERS on the basis of an orthopedic (cervical spine) condition. Respondent Stenroos had congenital fusion of the cervical spine with chronic pain that was stable for a period but recurred in 2011. Respondent Stenroos claimed the neck pain prevented her from working full time.

To evaluate Respondent Stenroos' disability retirement application, CalPERS referred Respondent Stenroos for an Independent Medical Examination (IME) with Doctor Joseph Serra. Dr. Serra issued a written report finding Respondent Stenroos was not unable to perform the duties of a manager for Respondent CalSTRS. On the basis of the IME report, and a review of Respondent Stenroos' medical and employment records, CalPERS denied Respondent Stenroos' disability retirement application.

Respondent Stenroos appealed CalPERS' determination. A one-day hearing was held in Sacramento, California on March 17, 2016. Counsel appeared on behalf of CalPERS. Respondent Stenroos represented herself. Respondent CalSTRS did not appear.

Prior to the hearing, CalPERS explained the hearing process to Respondent Stenroos and the need to support her case with witnesses and documents. CalPERS provided Respondent Stenroos with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Stenroos' 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. Serra. Dr. Serra testified that he interviewed Respondent Stenroos, obtained a personal and medical history, physically examined Respondent Stenroos and reviewed her medical and work records.

During examination, Respondent Stenroos complained of a pressure sensation in the skull, tenderness of the neck muscles, and pain in the upper back radiating to her right

hand with numbness. On physical examination, Dr. Serra found Respondent Stenroos had mild tenderness and limited range of motion in the neck area, but no muscle spasms or guarding. Dr. Serra conducted a neurologic exam of the upper extremities and found mildly diminished sensation, but excellent grip strength. Dr. Serra diagnosed Respondent Stenroos as having arthritis, congenital fusion of the cervical spine, and spinal stenosis (narrowing of tube containing spinal cord).

Respondent Stenroos was the program manager and recognized expert for CalSTRS' Business Continuity Program. The program's purpose was to "design, implement and assess business recovery strategies to ensure continuity of mission critical business process." Respondent Stenroos worked in an office environment requiring constant sitting, bending and twisting of the neck and repetitive use of hands at a computer. No heavy lifting was required.

On the basis of his examination, and taking into account the physical requirements of the job, Dr. Serra opined that Respondent Stenroos was not substantially incapacitated. Dr. Serra did not dispute that Respondent Stenroos experienced pain, but did not feel her subjective complaints of pain prevented her from performing the usual and customary duties of a manager. Dr. Serra testified at hearing that Respondent Stenroos could perform the physical requirements of the manager position, a desk job, despite her limited range of motion in the neck; her cervical spine was able to compensate for the fused area, which existed for the entire time Respondent Stenroos worked as a manager.

At hearing, Respondent Stenroos testified to chronic neck problems and the inability to work part-time for CalSTRS as her physicians recommended. She did not call a doctor to testify on her behalf.

The Administrative Law Judge (ALJ) considered all the evidence, and credited as persuasive, the report and testimony of Dr. Serra. The ALJ found Dr. Serra to be persuasive in his opinion that Respondent Stenroos could satisfy the physical requirements of her job despite the condition of her neck. The ALJ concluded that Respondent Stenroos' appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopts 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

  
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KEVIN KREUTZ  
Senior Staff Attorney