

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Patricia Louise O'Keefe-Minjarez (Respondent O'Keefe-Minjarez) was employed by the Newport-Mesa Unified School District as a Special Education Instructional Aide and is a miscellaneous member of CalPERS.

Respondent O'Keefe-Minjarez submitted an application for disability retirement on the basis of psychological conditions.

CalPERS reviewed written descriptions of Respondent O'Keefe-Minjarez's job duties and relevant medical reports submitted by Respondent O'Keefe-Minjarez. CalPERS also sent Respondent O'Keefe-Minjarez for an Independent Medical Examination with psychiatrist Lawrence Warick, M.D. Based on relevant medical evidence, CalPERS determined Respondent O'Keefe-Minjarez was not substantially incapacitated from performance of her duties as a Special Education Instructional Aide at the time her application for disability retirement was filed.

Respondent O'Keefe-Minjarez appealed CalPERS' determination and a hearing as to whether Respondent O'Keefe-Minjarez is substantially incapacitated from performing her usual and customary job duties was held on March 9, 2016.

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.

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

Respondent O'Keefe-Minjarez testified at the hearing regarding her job duties and her inability to perform her usual and customary job duties due to mental health issues. Respondent O'Keefe-Minjarez testified concerning her medical conditions and the limitations imposed by the health issues. Respondent O'Keefe-Minjarez offered further medical notes from her treating physicians to substantiate her claims.

CalPERS presented the medical reports of Dr. Warick. In his medical reports, Dr. Warick opined that Respondent O'Keefe-Minjarez was not restricted from performing any job functions from a psychiatric point of view. Dr. Warick's opinion was partly based on undercover surveillance, which showed Respondent O'Keefe-Minjarez engaging in social activities outside her house, although she claimed she was unable to leave her home unaccompanied.

The ALJ concluded that Respondent's appeal should be denied because Dr. Warick's testimony and the undercover surveillance reports demonstrated that Respondent O'Keefe-Minjarez is capable of performing her usual and customary job duties. 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.

June 15, 2016



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PREET KAUR  
Senior Staff Attorney