

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

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Respondent Dawn Wise (respondent Wise) applied for industrial disability retirement based on an orthopedic (lower back) condition. By virtue of her employment as a Correctional Officer with respondent California Department of Corrections and Rehabilitation, California Correctional Center (respondent CDCR), respondent Wise was a state safety member of CalPERS.

As part of CalPERS' review of her medical condition, respondent Wise was sent for an Independent Medical Examination (IME) by orthopedic surgeon Robert Henrichsen, M.D. Dr. Henrichsen interviewed respondent Wise, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Henrichsen also performed a comprehensive IME. Dr. Henrichsen opined that respondent Wise is not substantially incapacitated to perform her job duties as a Correctional Officer. After reviewing all of the medical documentation and the IME report, CalPERS determined that respondent Wise was not substantially incapacitated from performing her usual and customary duties as a Correctional Officer.

Respondent Wise appealed CalPERS' determination, exercising her 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 Sacramento, California on March 17, 2016. Counsel appeared on behalf of CalPERS. Respondent Wise represented herself at the hearing. Respondent CDCR did not appear at the hearing.

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

At the hearing, Dr. Henrichsen testified in a manner consistent with his examination of respondent Wise and the report prepared after the IME. Dr. Henrichsen's medical opinion is that there are no specific job duties respondent Wise is unable to perform; therefore, respondent Wise is not substantially incapacitated.

Respondent Wise testified on her own behalf. She did not call any physicians or other medical professionals to testify. Respondent Wise submitted certain medical reports to support her claim; however, the doctors authoring those reports did not use the CalPERS standard in determining whether respondent Wise was substantially incapacitated.

The ALJ denied respondent Wise's appeal. The ALJ found that respondent Wise bears the burden to prove by a preponderance of evidence (based on competent medical evidence) that her orthopedic condition renders her unable to perform her usual job duties. The ALJ found that respondent Wise failed to carry her burden of proof.

The ALJ concluded that respondent Wise is not permanently and substantially disabled or incapacitated from the performance of her job duties, and therefore, is not entitled to industrial disability retirement.

The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Pursuant to Government Code section 11517(c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends that the word "industrial" be inserted before the words "disability retirement" on pages four and six of 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.

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JOHN SHIPLEY  
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