

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

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

Respondent Debbie A. Hudson (respondent Hudson) worked as an Associate Governmental Program Analyst (AGPA) for respondent California Department of Corrections and Rehabilitation, Prison Industry Authority (respondent CDCR). By virtue of her employment, she was a state miscellaneous member of CalPERS.

Respondent Hudson applied for disability retirement with CalPERS on the basis of orthopedic conditions (neck, back and shoulder pain, and headaches) and an otolaryngologic/audiological condition (hyperacusis), which she claimed made her unable to work as an AGPA with respondent CDCR.

To evaluate respondent Hudson's disability retirement application, CalPERS referred respondent Hudson for an Independent Medical Examination (IME) with board certified orthopedic surgeons Roy N. Pottenger, M.D. and Baer I. Rambach, M.D., as well as board certified otolaryngology head and neck surgeon Joel C. Ross, M.D.

Dr. Pottenger interviewed respondent Hudson, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Pottenger also performed a comprehensive IME. Dr. Pottenger issued a written report finding respondent Hudson was not, in his opinion, unable to perform her duties as an AGPA with respondent CDCR on the basis of any orthopedic conditions.

Dr. Rambach interviewed respondent Hudson, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Rambach also performed a comprehensive IME. Dr. Rambach issued a written report finding respondent Hudson was not, in his opinion, unable to perform her duties as an AGPA with respondent CDCR on the basis of any orthopedic conditions. Subsequent to the initial IME report, Dr. Rambach issued a supplemental report finding that any problems or difficulties that respondent Hudson has as a result of musculoskeletal problems would not prevent her from performing her usual job duties.

Dr. Ross interviewed respondent Hudson, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed medical records. Dr. Ross also performed a comprehensive IME. Dr. Ross issued a written report finding respondent Hudson was not, in his opinion, unable to perform her duties as an AGPA with respondent CDCR on the basis of any audiological or otolaryngologic conditions. Dr. Ross re-evaluated respondent Hudson, approximately three years after his initial IME. After the second evaluation, Dr. Ross again issued a written report finding that respondent Hudson was not, in his opinion, unable to perform her duties as an AGPA with respondent CDCR on the basis of any audiological or otolaryngologic conditions.

On the basis of these IME reports and a review of respondent Hudson's medical records, CalPERS denied respondent Hudson's disability retirement application.

Respondent Hudson 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

May 5, 2016. Counsel appeared on behalf of CalPERS. Respondent Hudson was represented at the hearing by attorney Ilija Cvetich. Respondent CDCR did not appear at the hearing.

Prior to the hearing, CalPERS and respondent Hudson agreed that all medical records and reports would be admitted as direct evidence.

CalPERS submitted the reports of Drs. Pottenger, Rambach and Ross. As described above, each of these doctors concluded that there are no specific job duties respondent Hudson is unable to perform; therefore, respondent Hudson is not substantially incapacitated from performing her usual and customary duties.

Respondent Hudson testified on her own behalf. Respondent Hudson testified that she experiences ringing in her ears, and suffers from ear pain, vertigo, neck and back pain. She testified that she retired in December 2007 because of the pain she experienced, and because respondent CDCR did not grant her the requested reasonable accommodations. Respondent Hudson offered as evidence medical records and reports from her treating doctors to support her claim.

The ALJ denied respondent Hudson's appeal. The ALJ found that respondent Hudson bears the burden to prove by a preponderance of evidence (based on competent medical evidence) that medical conditions render her unable to perform her usual job duties as an AGPA. The ALJ found that respondent Hudson "did not identify any medical records or reports in her exhibits in which medical experts, applying the standards applicable in disability retirement cases, opined that she was substantially and permanently incapacitated from performing the usual duties of an AGPA..." The ALJ found the "opinions of Drs. Pottenger, Rambach and Ross were persuasive that respondent Hudson was not substantially incapacitated from performing her usual duties... Their IME reports were thorough and thoughtful. Their opinions were supported by the medical records and other documents they reviewed. "

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

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.

August 17, 2016



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JOHN SHIPLEY  
Senior Staff Attorney