

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

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

Cynthia Simmons-Cotledge (Respondent) was employed by the Employment Development Department as an Employment Program Representative.

Respondent submitted an application for disability retirement on the basis of a neurological condition.

CalPERS reviewed written descriptions of Respondent's job duties and relevant medical reports submitted by Respondent. CalPERS also sent Respondent for an Independent Medical Examination with neurological surgeon, Martin Krell, M.D. Based on relevant medical evidence, CalPERS determined Respondent was not substantially incapacitated from performance of her duties as an Employment Program Representative at the time her application for disability retirement was filed.

Respondent appealed CalPERS' determination and a hearing as to whether Respondent was substantially incapacitated from performing her usual and customary job duties was held on April 27, 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.

At the hearing, Respondent was represented by counsel. Respondent testified at the hearing regarding her job duties and her inability to perform her usual and customary job duties due to her physical limitations. Respondent testified concerning her medical conditions and the limitations imposed by the health issues.

Respondent offered the medical records of Dr. Ezekiel Fink, M.D. who had evaluated Respondent in a Qualified Medical Exam for her workers' compensation claim on December 17, 2013 and again on January 21, 2015. In Dr. Fink's deposition transcript from Respondent's workers' compensation case he opined that Respondent was permanently disabled and substantially incapacitated from performing the usual and customary duties of an Employment Program Representative.

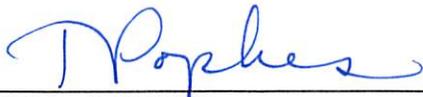
Dr. Krell testified regarding his examination of Respondent and his diagnosis. Dr. Krell opined that Respondent was not restricted from performing any job functions from a neurological point of view. However, Dr. Krell did not have the benefit of the other medical testing results when he evaluated Respondent as they were completed after his evaluation of Respondent.

The ALJ concluded that Respondent's appeal should be granted because the ALJ found Respondent demonstrated, based on competent medical evidence, that she is unable to perform the usual functions of her job.

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

Because the Proposed Decision is in favor of Respondent, it is unlikely she will appeal the decision. Therefore, the risks of adopting the Proposed Decision are minimal.

August 17, 2016



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TERRI L. POPKES  
Senior Staff Attorney