

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

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

Respondent Andrew Borovansky (Respondent) applied for Industrial Disability Retirement based on an orthopedic condition (neck, back and left shoulder). Respondent was employed as a Construction Inspector II for the City of Sacramento (Respondent City). CalPERS determined that Respondent was not disabled, and Respondent appealed. A hearing was completed on June 30, 2016.

On November 13, 2015, CalPERS sent a letter to the Respondent which explained the hearing process and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing Respondent testified that his injury occurred on July 11, 2012 when he fell down a flight of stairs landing on the concrete. He further testified that he would be unable to perform the essential functions of his job as a Construction Inspector II because of the injuries to his neck, back and left shoulder.

As part of CalPERS' review of his medical condition, Respondent was referred for an Independent Medical Examination (IME) to Orthopedic Surgeon Dr. Robert Henrichsen. Dr. Henrichsen interviewed Respondent, took Respondent's work history, and reviewed Respondent's job descriptions, medical records and diagnostic studies. He also performed a comprehensive IME examination.

Dr. Henrichsen opined that there were no specific job duties that Respondent was unable to perform, and that Respondent was not substantially incapacitated from performing the duties of a Construction Inspector II. At the hearing, Dr. Henrichsen testified to his examination and report. Dr. Henrichsen's medical opinion is that Respondent is not substantially incapacitated.

Dr. Henrichsen interviewed Respondent, took Respondent's work history, and reviewed Respondent's job descriptions, medical records and diagnostic studies. He also performed a comprehensive IME examination. Dr. Henrichsen opined that there were no specific job duties that Respondent was unable to perform, and that Respondent was not substantially incapacitated from performing the duties of a Construction Inspector II. At the hearing, Dr. Henrichsen testified to his examination and report. Dr. Henrichsen's medical opinion is that Respondent is not substantially incapacitated.

Respondent testified on his own behalf. He did not call any physicians or other medical professionals to testify.

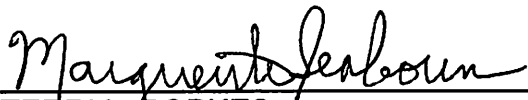
The Administrative Law Judge (ALJ) found that Respondent bears the burden to show by a preponderance of the evidence (based on competent medical evidence) that his symptomology renders him unable to perform his usual job duties. The ALJ found that Respondent failed to carry his burden of proof and that Respondent did not establish by

competent, objective medical opinion, that, at the time of application, he was permanently disabled or incapacitated from performing his usual duties of a Construction Inspector II for Respondent City.

The ALJ concluded that Respondent's appeal should be denied. 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.

September 21, 2016

*for*   
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TERRI L. POPKES  
Senior Staff Counsel