

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

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

Respondent Carla Backlin (Respondent) applied for service pending Industrial Disability Retirement on March 10, 2015, based on an orthopedic (back) condition caused while working as a Registered Nurse (RN) for Respondent California Department of Corrections and Rehabilitation, Avenal State Prison (CDCR). On June 10, 2015, CalPERS determined that Respondent was not substantially incapacitated from the performance of her duties as an RN for CDCR. Respondent appealed. A hearing was completed on May 16, 2016.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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.

As part of CalPERS' review of her medical condition, Respondent was sent for an Independent Medical Examination (IME) to board certified Orthopedic Surgeon Dr. Daniel D'Amico. Dr. D'Amico took Respondent's history, conducted an orthopedic examination focused on her back, reviewed her medical and job records, and her diagnostic studies. He prepared an IME report, in which he reached diagnostic impressions and answered specific questions. He also reviewed additional records, and submitted a Supplemental Report.

Dr. D'Amico testified at the hearing regarding his findings and conclusions. He concluded that Respondent is not substantially incapacitated from the performance of her usual duties and is able to perform her duties as an RN. He specifically stated that Respondent may have non-physiological pain, but there were no discogenic or neurologic findings that render her disabled. Dr. D'Amico's medical opinion is that Respondent is not substantially incapacitated to perform the duties of an RN.

At hearing, Respondent testified on her own behalf. She also called her daughter-in-law and a neighbor to testify. Both of her witnesses observed that Respondent has difficulty performing some activities, and is not as active as she once was. Respondent also submitted various medical records from differing sources.

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 she is substantially incapacitated for the performance of her usual job duties. The ALJ believed Respondent's testimony that she is in pain. However, the ALJ found that taking into account all the evidence, Respondent did not establish that her pain has a physiological basis. The ALJ found that taken together, Dr. D'Amico's testimony, IME report and Supplemental IME Report were persuasive. Absent evidence of any physiological basis for Respondent's claimed disability, Respondent's industrial disability retirement application must be denied.

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

  
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Senior Staff Attorney