

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

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

Respondent Kristina Chavez (Respondent Chavez) worked as a Correctional Officer for Respondent California Department of Corrections and Rehabilitation (CDCR) at the Valley State Prison. As such, Respondent Chavez is a state safety member of CalPERS covered by Government Code section 21151.

On July 8, 2011, Respondent Chavez applied for Industrial Disability Retirement on the basis of an orthopedic condition of the back. CalPERS approved her application and she has been receiving disability retirement benefits since September 16, 2011.

CalPERS notified Respondent Chavez that it would be reexamining her, pursuant to Government Code section 21192, to determine her continued eligibility to receive disability retirement. CalPERS requested an Independent Medical Evaluation (IME) from Arthur Auerbach, M.D., a board-certified orthopedic surgeon, to evaluate the extent of Respondent's ongoing orthopedic impairment, if any.

Dr. Auerbach performed an IME of Respondent on October 27, 2015. Dr. Auerbach reviewed medical records, interviewed respondent, conducted a physical examination and authored a report. He concluded that Respondent was no longer substantially incapacitated.

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

At the hearing, Dr. Auerbach described his findings upon physical examination of Respondent Chavez as unremarkable except she is overweight and has degenerative disc disease at L3-L4. Dr. Auerbach acknowledged that Respondent had degenerative disc disease that caused her pain; however, he opined that while performing certain tasks may be difficult, Respondent was not unable to perform her usual and customary work activities.


Respondent Chavez offered medical reports from her primary treating physician in the workers' compensation system, Marshall Lewis, M.D. Dr. Lewis' reports reflect findings upon physical examination consistent with Ms. Chavez's history of degenerative disc disease at L3-L4.

The Administrative Law Judge (ALJ) held that CalPERS had the burden of proving that Respondent Chavez is no longer substantially incapacitated from performing her usual duties as a Correctional Officer for Respondent CDCR.

After reviewing the evidence, the ALJ concluded that CalPERS did not meet its burden and that Respondent's appeal should be granted. 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 is not likely to file a Writ Petition in Superior Court seeking to overturn the Decision of the Board, since she prevailed.

November 16, 2016

  
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AUSTA WAKILY  
Senior Staff Attorney