

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

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

Respondent Alfredo Macias (Respondent Macias) worked as a District Sales Representative for Respondent California State Lottery. By virtue of his employment, Respondent Macias is a state miscellaneous member of CalPERS subject to Government Code section 21150.

On May 29, 2013, Respondent Macias applied for service pending disability retirement based on his orthopedic neck, toe, shoulder and knee conditions.

CalPERS requested an Independent Medical Evaluation (IME) from John Serocki, M.D., a board-certified orthopedic surgeon, to evaluate the extent of Respondent Macias' orthopedic conditions. Dr. Serocki performed an IME of Respondent Macias on January 16, 2014. Dr. Serocki reviewed medical records, interviewed Respondent Macias, conducted a physical examination, and authored a report. He concluded that Respondent Macias was not substantially incapacitated from performing his usual and customary duties as a District Sales Representative.

Based on relevant medical evidence, CalPERS denied Respondent Macias' application for disability retirement. CalPERS notified Respondent Macias of its determination by letter dated May 13, 2014. Respondent Macias filed a timely written appeal and a hearing was held before an Administrative Law Judge (ALJ) on August 22, 2016.

To be eligible for disability retirement an individual must demonstrate, through competent medical evidence, that he or she is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition that is the basis for the claimed disability must be permanent or of an uncertain and extended duration.

At the hearing, Dr. Serocki described his findings upon physical examination of Respondent Macias. Dr. Serocki testified that Respondent Macias may have some difficulty performing weight bearing activities, crawling, kneeling, climbing, and squatting; however, those difficulties did not render him substantially incapable of performing his essential job duties.

At the hearing, Respondent Macias was represented by counsel.

Respondent Macias testified about his orthopedic neck, toe, shoulder, and knee conditions and the physical limitations caused by those conditions. He also testified about his job duties and his inability to perform his usual and customary duties due to his orthopedic conditions.

Respondent Macias also presented the testimony of Khalid Bashir Ahmed, M.D., board certified orthopedic surgeon, who had evaluated Respondent Macias on February 19, 2013, May 14, 2013 and June 25, 2013, for workers' compensation purposes.

Dr. Ahmed testified about the details of Respondent Macias' examination and orthopedic conditions. He testified that the pain caused by Respondent Macias' orthopedic conditions prevent him from performing the essential duties of his job. Dr. Ahmed further testified that he understood the different standard for disability applied by CalPERS, and maintained that Respondent Macias' was disabled under the CalPERS standard.

The ALJ concluded that Respondent Macias' appeal should be granted, because Respondent Macias demonstrated through competent medical evidence, that he is unable to perform the usual functions of his job as a District Sales Representative.

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 he prevailed.

November 16, 2016

  
\_\_\_\_\_  
AUSTA WAKILY  
Senior Staff Attorney