

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

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

Respondent Bruno M. Brito (Respondent Brito) applied for industrial disability retirement in December 2013, on the basis of psychological (anxiety, depression, PTSD) conditions. By virtue of his employment as a Psychiatric Technician with Department of Corrections Institution for Women, Respondent Brito is a state safety member of CalPERS.

As part of CalPERS' review of his medical condition, Respondent Brito was sent for an Independent Medical Examination (IME) to Dr. Lawrence H. Warick, a board-certified psychiatrist. Dr. Warick provided CalPERS with narrative reports of his findings and conclusions. After reviewing all of those documents, CalPERS determined that Respondent Brito was not permanently disabled or incapacitated from performing the usual and customary duties of a Psychiatric Technician.

Respondent Brito appealed that determination and a hearing was held on September 29, 2016.

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

At the hearing, the Administrative Law Judge (ALJ) heard evidence from two witnesses. CalPERS presented the testimony and reports of Dr. Warick, who examined Respondent Brito on July 25, 2014. Respondent Brito testified on his own behalf.

Dr. Warick testified that after examining Respondent Brito and reviewing medical history, Respondent Brito was not substantially incapacitated for the performance of his usual duties. Rather, Dr. Warick explained that Respondent Brito's desire not to return to work was more like one who, at age 64, "wanted to hang up his spurs."

Respondent Brito testified and generally disagreed with Dr. Warick's opinions. Respondent Brito submitted medical records and deposition transcripts of his evaluating physician.

The ALJ found that any award Respondent Brito may have received from workers' compensation does not establish eligibility for a CalPERS disability retirement. While evidence demonstrated that Respondent Brito has mental health diagnoses, has received treatment for those conditions, and is currently undergoing treatment, those conditions did not establish that he is permanently disabled or incapacitated from performing his regular and customary job duties.

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.

December 21, 2016

  
CHRISTOPHER PHILLIPS  
Senior Staff Attorney