

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

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

Respondent Mark Whitney (Respondent) was employed by the Department of State Hospitals – Patton as a Psychiatric Technician. By virtue of his employment, Respondent is a safety member of CalPERS. On November 21, 2013, Respondent submitted an application for Industrial Disability Retirement on the basis of orthopedic conditions (neck, shoulder, and back).

CalPERS reviewed written descriptions of Respondent's job duties and relevant medical reports submitted by Respondent. CalPERS also sent Respondent for an Independent Medical Examination with Orthopedic Surgeon, Fredrick Close, M.D. Based on relevant medical evidence, CalPERS determined Respondent was not substantially incapacitated from performance of his duties as a Psychiatric Technician at the time his application for Industrial Disability Retirement was filed.

Respondent appealed CalPERS' determination and a hearing as to whether Respondent is substantially incapacitated from performing his usual and customary job duties was held on November 29, 2016.

To be eligible for Industrial Disability Retirement, competent medical evidence must demonstrate the member is substantially incapacitated from performing the usual and customary duties of her position. Furthermore, the injury and condition that is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

Prior to the hearing, CalPERS explained the hearing process to Respondent 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.

Dr. Close testified regarding his examination of Respondent. Dr. Close opined that Respondent was not restricted from performing any job functions from an orthopedic point of view and was not substantially incapacitated from performing his usual and customary duties. Respondent testified regarding his medical condition and his inability to perform the essential job functions. Respondent offered medical records into evidence to support his position.

The Administrative Law Judge (ALJ) concluded that Respondent's appeal should be denied because Respondent did not provide competent medical evidence demonstrating he has a disability of permanent or extended duration. The ALJ noted that most of the medical records offered by Respondent were "a decade old and therefore did not speak to Mr. Whitney's alleged present inability to perform his job duties."

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.

February 15, 2017



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PREET KAUR  
Senior Staff Attorney