

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Sarah Stewart (Respondent) originally applied, and was approved for, disability retirement based on an orthopedic condition (back pain) on November 17, 2011. Respondent was notified of re-evaluation of her disability in 2015. By virtue of her employment as an Office Technician for Respondent Board of Equalization (Respondent BOE), Respondent was a miscellaneous member of CalPERS. CalPERS determined that Respondent was not disabled at her re-evaluation, and Respondent appealed. A hearing was completed on December 18, 2016.

Prior to the hearing, CalPERS sent a letter to the Respondent which explained the hearing process 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.

At the hearing, Respondent testified that her back was initially injured in a car accident that occurred during her work with former employer California Department of Transportation (CalTRANS) in May 1999. She underwent back surgery in her lumbar area, and was able to return to work as an Office Technician for CalTRANS.

Respondent then went to work for Respondent BOE as an Office Technician. On January 15, 2008, she re-injured her back when lifting a 50-pound box of paper. She experienced severe pain, and received treatment from medical providers. She attempted to work while receiving treatment, but was unable to do so. She could not commute to work because the jarring of the train was extremely painful, and her pain worsened as the workday progressed.

Respondent's initial disability retirement application was approved based on the medical evaluation of Dr. Kahmann. Dr. Kahmann diagnosed chronic low back pain. Dr. Kahmann's competent medical opinion was that she had undergone all appropriate conservative treatment without improvement, and was not a candidate for further surgery. She had numerous permanent limitations to her usual job duties (no lifting, no bending, etc.)

As part of CalPERS' review of Respondent's medical condition during her reevaluation in 2015, Respondent was referred for an Independent Medical Examination (IME) to Orthopedic Surgeon Brendan McAdams M.D. Dr. McAdams examined Respondent, reviewed her medical records and obtained her medical history. He also performed an IME examination and prepared an IME Report.

Dr. McAdams wrote in his IME Report: "Based on my physical examination, in which there are truly no absolute objective findings, I can find no specific job duties [Respondent] would be unable to perform because of any physical conditions evaluated today. Despite the fact that she is very vocal about her complaints of pain, she lacked

any true reproducible physical findings. She did manipulate the examination, and that included the straight leg raising particularly, . . . " Dr. McAdams opined that Respondent is not substantially incapacitated from performing the duties of an Office Technician for Respondent BOE. At the hearing, Dr. McAdams testified to his examination and report.

Respondent challenged Dr. McAdams' examination as insufficient, and presented a video recording of the exam in support of her testimony. Respondent testified that the IME examination lasted only about 5 minutes, and the video shows the examination lasted 8 minutes. Respondent also testified that, pursuant to Dr. McAdams' instructions, she did not bend or move beyond what she could tolerate, which explains her difficulty with completing straight leg raises.

The Administrative Law Judge (ALJ) found that Respondent met her burden of proof to offer sufficient competent medical evidence to support her continued right to receive disability retirement. The ALJ found that credible medical evidence and opinion establishes that Respondent is incapacitated for the performance of her duties by reason of low back pain. The ALJ reasoned that in 2012, CalPERS found Dr. Kahmann's opinions persuasive and supportive of Respondent's disability claim. In 2012, Dr. Kahmann's opinions were supported by undisputed medical evidence, such as her two injuries and back surgery. The injuries and surgery remained undisputed, and Respondent presented testimony consistent with her continuing pain and limitations. In light of those facts, the ALJ found that Dr. McAdams' contrary opinion based on a brief exam of Respondent and rooted in his conclusion that she was exaggerating her symptoms, is insufficient to show changed circumstances, or to overcome Respondent's testimony, or the medical evidence and prior determination that supported her disability claim.

The ALJ concluded that Respondent's appeal should be sustained. 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. Having prevailed at the hearing, the member will likely not file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

April 19, 2017.

  
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Senior Staff Attorney