

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Tiffany S. Estrada-Perez (Respondent) applied for disability retirement based on orthopedic (right shoulder tendinitis, right lateral and medial epicondylitis) conditions. By virtue of her employment as a Senior Animal Services Officer for Respondent City of Lathrop (Respondent City), Respondent was a local miscellaneous member of CalPERS.

Respondent City filed an application for service pending disability retirement on November 14, 2017, and has been receiving benefits since that time.

As part of CalPERS' review of Respondent's medical condition, Robert K. Henrichsen, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Henrichsen interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Henrichsen opined that Respondent is incapable of performing her usual and customary job duties; however, the incapacity is temporary and will last less than 12 months.

In order to be eligible for disability retirement, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the basis of the claimed disability must be permanent or of an extended duration which is expected to last at least 12 consecutive months or will result in death.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of her position.

Respondent City appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on May 29, 2019. Respondent represented herself at the hearing. Respondent City appeared at the hearing and was represented by counsel.

Prior to the hearing, CalPERS explained the hearing process to Respondent 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, Dr. Henrichsen testified in a manner consistent with his examination of Respondent and the IME report. Dr. Henrichsen's medical opinion is that while she suffered medical impairments to her shoulders and elbow, such impairments are

temporary and will last less than twelve months. Therefore, Respondent is not permanently incapacitated under the Government Code definition.

Respondent testified on her own behalf that she sustained an injury in September 2015 and still has pain as a result of the injury. Respondent called Dr. Chen, her treating physician at Manteca Kaiser to testify regarding her orthopedic conditions. Dr. Chen testified that he treated Respondent until September 2017 and that although such a condition could last longer in some patients, her condition would resolve in “a year or so.”

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that Respondent and the City failed to establish “through competent, objective medical evidence that respondent was permanently disabled or substantially incapacitated from the performance of her usual and customary duties of her job as an officer for the City, based on her orthopedic conditions.”

The ALJ concluded that Respondent is not eligible for disability retirement.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

September 18, 2019

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PREET KAUR  
Senior Attorney