

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Vivian A. Hogge (Respondent) applied for service pending disability retirement based on an orthopedic (spine) condition on December 23, 2019. By virtue of her employment as a Lead Food and Nutrition Services – Secondary for Respondent Elk Grove Unified School District (Respondent School District), Respondent was a school miscellaneous member of CalPERS. Respondent has been receiving service retirement benefits effective March 3, 2020.

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 also performed a comprehensive physical examination of Respondent's back and lower extremities. Dr. Henrichsen opined that Respondent is not substantially incapacitated to perform her usual job duties.

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 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 26, 2021. Respondent represented herself at the hearing. Respondent School District also appeared at the hearing.

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.

Copies of written job descriptions for Respondent's position as a Lead Food and Nutrition Services – Secondary for Respondent School District were received into evidence and considered by the ALJ. A representative of Respondent School District testified at hearing that the written job descriptions were accurate.

At the hearing, Dr. Henrichsen testified in a manner consistent with his examination of Respondent and the IME reports. Dr. Henrichsen's medical opinion is that Respondent can perform the duties of her position and is not substantially incapacitated. He testified that Respondent's 2017 and 2020 lumbar spine imaging studies demonstrated findings normal for Respondent's age and do not reasonably support her alleged symptoms. Further, he found that her 2021 lumbar spine MRI suggested possible impingement, but that impingement was not corroborated by the extensive testing he performed during the exam. Dr. Henrichsen also found Respondent's physical examination to be relatively unremarkable. She had a stable spine, normal gait, normal strength, normal neurological findings, no evidence of nerve impingement or radicular symptoms, and normal knees and legs with minimal atrophy. Dr. Henrichsen explained that although Respondent was only able to squat at 20 degrees and had substantially reduced range of motion during his physical examination, the findings were inconsistent for individuals with lower back pain and reasonable knee function, because Respondent had a normal knee examination and did not have difficulties sitting in a chair with her knees flexed at 90 degrees. Dr. Henrichsen further testified that Respondent's significant reduced range of motion of her lower back was not corroborated by her imaging studies, by his physical examination, nor by more recent medical providers records.

Respondent testified on her own behalf that she experiences severe back pain, is on pain medication, and cannot perform her job duties as a result of her back pain. She did not call any physicians or other medical professionals to testify. She did submit medical records from her treating physicians which were admitted as administrative hearsay. Hearsay evidence may supplement or explain other evidence but is not sufficient by itself to support a finding.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Dr. Henrichsen's medical opinion was persuasive and supported by a thorough review of her records and a detailed physical examination. The ALJ further found that Dr. Henrichsen persuasively explained the bases for his conclusions and opinions. The ALJ held that Respondent did not meet her burden of proof to demonstrate by a preponderance of the evidence that she is incapacitated from the performance of her job duties.

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

September 15, 2021

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Staff Attorney