ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Annette Weathington (Respondent) was employed as a Clinical Social Worker by the California Department of Corrections and Rehabilitation, California Institution for Women (CDCR). By virtue of her employment, Respondent was a state safety member of CalPERS. Respondent submitted an application for Industrial Disability Retirement (IDR) on the basis of claimed orthopedic (hip, back, lower extremity) conditions. CalPERS reviewed relevant medical reports and a description of Respondent's usual and customary job duties. Leslie Kim, M.D., a board-certified Orthopedic Surgeon, evaluated Respondent, reviewed medical reports and a job description, and prepared a written report, containing his observations, findings and conclusions. Dr. Kim offered an opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of her position as a Clinical Social Worker for CDCR. CalPERS denied Respondent's application for IDR. Respondent appealed CalPERS determination and a hearing was held on August 7, 2012.

Respondent testified on her own behalf at the hearing. Respondent testified that she experiences pain, does not sleep well and finds it difficult to function, especially in the morning. Respondent did not offer copies of any medical reports into evidence. Respondent did not call any physician or other health care professional to testify on her behalf.

Dr. Kim testified consistently with the contents of his written report. Dr. Kim noted that Respondent presented inconsistent symptoms and that there was a lack of verifiable objective findings to support her complaints. Dr. Kim referred to images of Respondent contained in a sub rosa surveillance video which showed Respondent physically moving (most notably walking long distances) that were inconsistent with Respondent's claims regarding limited physical functionality.

After considering all of the testimony and evidence, the Administrative Law Judge (ALJ) found that the only competent medical opinion presented at the hearing was contained in the written report and testimony provided by Dr. Kim. Accordingly, the ALJ found that the evidence established that Respondent was not substantially incapacitated from performing the usual and customary duties of her position as a Clinical Social Worker for CDCR.

The ALJ concluded that Respondent's appeal should be denied. 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.

November 15, 2012

RORY J. COFFEY
Senior Staff Attorney