ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Angela Dean (Respondent) was employed by the California Highway Patrol (CHP) as a State Traffic Officer. By virtue of her employment, Respondent was a State safety member of CalPERS. Respondent applied for and was approved to receive Industrial Disability Retirement (IDR) on the basis of an orthopedic (back) condition. Respondent was the subject of re-evaluation to determine if she remained substantially incapacitated from performing the usual and customary duties of a CHP Traffic Officer. Frank Minor, M.D., evaluated Respondent, reviewed applicable medical reports and reviewed the 14 Critical Tasks statement regarding CHP officers. Dr. Minor prepared a written report which contained his observations, findings, conclusions, and ultimate opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of a CHP officer. CalPERS staff determined that Respondent was no longer substantially incapacitated, was no longer eligible for IDR, and should, therefore, be reinstated to her former position as a CHP Traffic Officer. Both Respondent and CHP appealed staff's determination. A hearing was held on December 19, 2013.

In order to remain eligible for disability retirement, competent medical evidence must demonstrate that the individual remains substantially incapacitated from performing the usual and customary duties of their former position. The injury or condition which is the basis for the disability must be permanent or of an extended and uncertain duration.

Prior to 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 handbook. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing, the Administrative Law Judge (ALJ) received into evidence multiple documents describing the usual and customary duties of a CHP Traffic Officer. The record includes copies of a State Personnel Board (SPB) Specification, a 2010 version of the CHP 14 Critical Tasks Statement and a 2012 version of the CHP 14 Critical Tasks Statement. In addition, Respondent testified regarding the usual and customary duties of a CHP Traffic Officer.

Respondent called John Champlin, M.D., to testify on her behalf at the hearing. Dr. Champlin is Board certified in Family Practice. He testified that he is familiar with the usual and customary duties of CHP officers. He examined Respondent for the specific purpose of testifying at the hearing. Dr. Champlin admitted that, as part of his evaluation of Respondent, he did not review relevant medical records. His written report was also only two pages in length and he admitted that the report of Dr. Minor was more thorough than his report. Dr. Champlin testified that Respondent was substantially incapacitated from performing the duties of a CHP officer because of a lack of sensation at the front portion or area of her knees, which he believed would

make it more difficult for Respondent to effectively deal with subjects and perform some aspects of a physical arrest.

Dr. Minor testified consistently with the matters set forth in his written report. With regard to his review of relevant medical records, Dr. Minor noted that, at the time that Respondent was approved for IDR, her own treating physician (Dr. Armstrong) stated in his reports that Respondent had a "slight permanent disability" (for purposes of Workers' Compensation rating), that Respondent was fully capable of performing her usual and customary duties as a CHP officer, and that her cervical/spinal condition did not prevent her from returning to work.

With regard to his interview with Respondent, Dr. Minor testified that her presenting complaints were that of a dull ache in her neck and low back. Respondent told Dr. Minor that she occasionally had pain radiating down her right leg and that she experienced "pins and needles" sensations in the front of her knees. Dr. Minor testified that Respondent told him that she could perform the usual and customary duties of a CHP officer, but that in doing so her neck and low back pain might increase.

In his clinical examination of Respondent, Dr. Minor noted that she had normal cervical and lumbar spine range of motion. Dr. Minor found that Respondent had good grip strength, fully intact reflexes and all range of motion testing of her upper extremities was normal. Range of motion in the lower extremities was also normal. Dr. Minor found numbness of the anterior surfaces of Respondent's right and left knee. Overall, Dr. Minor characterized his physical examination and findings of Respondent as "essentially normal." Dr. Minor stated his opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of a CHP officer.

Dr. Minor was questioned by both Respondent and counsel for CHP. The ALJ noted that "Dr. Minor explained his findings and conclusions in greater detail." Specifically, responding to Dr. Champlin's testimony regarding the loss of sensation on the front of Respondent's knees, the ALJ found, in relevant part:

> "...Dr. Minor conceded that there is a small amount of muscle atrophy in the left knee when compared to the right, but added that her knee motions were good with ligamentous stability. While [Respondent] did have some loss of feeling in the front of both knees and could not feel a light touch, Dr. Minor did not agree with Dr. Champlin that this was a disabling condition. <u>Dr. Minor explained sensation at the skin level is only one component of proprioception.</u> Muscle tendon units also help locate the position of a person's extremities. Dr. Minor testified that if a loss of sensation in the knees caused balance issues [as claimed by Dr. Champlin], patients with artificial knees or ACL reconstruction would have difficulty standing, which is not the case. Moreover, nothing in Dr. Minor's overall physical examination of [Respondent] suggested a proprioception deficit." (Emphasis added.)

After considering all of the documentary evidence and testimony of witnesses, the ALJ found that "Dr. Minor was the more persuasive expert witness on the question of [Respondent's] substantial capacity to perform her usual duties." The ALJ found that Dr. Minor's testimony "effectively debunked" the testimony of Dr. Champlin. Accordingly, the ALJ found that the weight of the competent medical evidence supported the conclusion that Respondent is no longer substantially incapacitated from performing the usual and customary duties of a CHP Traffic Officer.

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.

June 18, 2014

Rory J. Coffey

RORY J. COFFEY
Senior Staff Attorney