ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Leslie Graham (Respondent) is a CalPERS member through her employment at Respondent, California Department of Corrections and Rehabilitation (CDCR) California State Prison-Los Angeles County. She was employed there as an office assistant typist.

Respondent has not worked for a CalPERS entity since she reported medical issues in July 2003. She had pain related to her typist employment and subsequently had shoulder surgery in July 2004. On July 12, 2005, Respondent filed an application for disability retirement on the basis of claimed orthopedic (shoulder, upper extremities and cervical spine) conditions. She received a CalPERS disability retirement effective January 7, 2005. She is currently approximately 38 years old, and not yet qualified for a service retirement.

In 2012, Respondent was notified that under Government Code section 21192 CalPERS was reviewing her disability retirement status. Pursuant to Government Code section 21192, a member who retires as a result of disability at an age less than 50 can be required to undergo subsequent medical examination to determine if he or she remains incapacitated from the usual and customary duties of his or her position. The injury or condition that is the basis for the disability retirement must be permanent or of an extended and uncertain duration. Respondent was 28 years old when she was granted disability retirement in 2005.

In August 2012, CalPERS' staff arranged for a new medical examination, and then reviewed that report and all relevant medical reports. Dr. Edward Green III, MD, a Board-certified Orthopedic Surgeon, examined Respondent in 2012 and determined that Respondent was capable of performing her duties at CDCR, as she was no longer substantially incapacitated from performing her usual and customary job.

Respondent appealed that determination and a hearing on her appeal was held on July 30, 2014.

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

CalPERS followed the process to return the Respondent to the workforce. 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) heard evidence from two witnesses. CalPERS presented the CDCR work coordinator and a medical doctor, Dr. Green. Respondent did not appear and the hearing proceeded as a default.

Dr. Green testified that while the Respondent may have some limitations in her movements, she was not substantially incapacitated from performance of her job duties. Dr. Green testified that the findings upon examination indicated that the Respondent had improved, had responded to medical treatment, and that her condition was now "permanent." Dr. Green also testified that Respondent had informed him that she had worked from 2005-2007 at multiple staffing agencies, doing desk work similar to her CDCR work, and that from 2010 through the August 2012 she had performed full time general office work, including keyboarding and other activities similar to her CDCR work.

The ALJ found that Dr. Green's findings were persuasive that Respondent is no longer incapacitated from the performance of her usual duties in her employment by CDCR. The ALJ concluded that Respondent's appeal should not be granted. The Proposed Decision is consistent with 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 motion with the Board under Government Code section 11520(c) requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

October 15, 2014

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