ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Andrew L. Warren (Respondent Warren) was employed by Respondent California Department of Corrections and Rehabilitation, RJ Donovan Correctional Facility (CDCR), as a Correctional Officer. By virtue of his employment, Respondent Warren was a State safety member of CalPERS. In July 2012, Respondent Warren submitted an application for industrial disability retirement. The claimed basis for disability was stress, extreme fatigue, irritability, poor concentration, and depression. CalPER's reviewed relevant medical and psychological reports regarding Respondent Warren and a written description of the usual and customary job duties of a Correctional Officer. Respondent Warren was evaluated by Jaga Nath Glassman, M.D., a board-certified Psychiatrist.

Dr. Glassman also reviewed applicable medical records and a written job description. Dr. Glassman prepared a written report which contained his observations, findings, conclusions, and ultimate opinion that Respondent Warren was not substantially incapacitated from performing the usual and customary duties of a Correctional Officer. Staff denied Respondent Warren's application for industrial disability retirement. Respondent Warren appealed staff's determination and a hearing was held on December 4, 2014.

Prior to the hearing, CalPERS explained the hearing process to Respondent Warren and the need to support his case with witnesses and documents. CalPERS provided Respondent Warren with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Warren's questions and clarified how to obtain further information on the process.

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 which is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

Respondent Warren testified at the hearing and offered copies of medical reports into evidence. He began working as a Correctional Officer in 1994. He described his usual and customary duties. In 2010, Respondent Warren was first disciplined by his superiors for sleeping on duty. Respondent Warren received three additional disciplinary actions for sleeping on duty over the next two years. Respondent Warren also described experiencing difficulties with certain of his superiors at work.

Dr. Glassman testified at the hearing and copies of his reports were received into evidence. The Administrative Law Judge (ALJ) summarized the evidence from Dr. Glassman's initial report and testimony as follows:

> Dr. Glassman's impression of respondent was that respondent had developed an anxious, agitated depression as a result of feeling that he had been treated unfairly by his

> superiors. Dr. Glassman thought that the depression had improved with treatment, that respondent showed no mental status abnormalities, and that there was no objective evidence of a current significant mood disorder or anxiety disorder. He said respondent cooperated with the examination and put forth his best effort. He further stated that respondent had been temporarily disabled as a result of his employment but that he currently was not incapacitated from a psychological perspective. Dr. Glassman concluded that respondent was no longer substantially incapacitated from functioning in his usual work as a Corrections Officer. (Factual Findings No. 24.)

Dr. Glassman had also reviewed additional medical records, which included reports from a not-yet-licensed psychologist in training, who saw Respondent Warren through the VA as part of group counseling. Disagreeing with the psychologist-in-training, Dr. Glassman testified that Respondent Warren exhibited no objective signs that would support a diagnosis of post-traumatic stress disorder (PTSD) and pointed out that the PTSD diagnosis was based almost entirely on Respondent Warren's self-reporting (answers to questions) and that on mental status examination, the psychologist-in-training had noted only "mild anxiety."

The ALJ regarded Respondent Warren's testimony as "confused."

> Respondent was vague and disorganized when testifying about the problems he had at the prison regarding falling asleep on the job. He testified that each time he was written up for falling asleep he was working mandatory overtime, meaning a double shift. He said he would fall asleep during the second shift, not the first. (Factual Findings No. 37.)

After considering all of the documentary evidence and the testimony of Respondent Warren and Dr. Glassman, the ALJ concluded that Respondent Warren had not demonstrated with competent medical evidence that he was substantially incapacitated from performing the usual and customary duties of a Correctional Officer.

> 10. ...Dr. Glassman's opinion that respondent's depression had improved, that there were no objective signs of a current mood or anxiety disorder, and that respondent was no longer substantially incapacitated from functioning as a Corrections Officer is supported by the weight of the evidence.
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> 11. Respondent testified that his problem with the job was not the inmates, but rather his supervisors and managers. He even admitted that he could work one regular shift. Other than his own testimony, which as stated was difficult to

> follow, respondent did not produce sufficient direct evidence to show he was incapacitated from performing the usual duties of a correctional officer. It was his burden to do so and he did not meet his burden." (Legal Conclusions No. 10 & 11.)

The ALJ concluded that Respondent Warren'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.

March 18, 2015

RORY J. COFFEY
Senior Staff Attorney