ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Michelle Martin (Respondent Martin) applied for disability retirement on the basis of orthopedic (epicondylitis, tendonitis, and Carpal Tunnel Syndrome) conditions. By virtue of her employment as a Field Representative with the Department of Motor Vehicles (DMV), Respondent Martin was a state miscellaneous member of CalPERS.

As part of CalPERS' review of her medical condition, Respondent Martin was sent for an Independent Medical Examination (IME) to Kenneth Baldwin, M.D., board-certified Orthopedic Surgeon. Dr. Baldwin reviewed Respondent Martin's medical records, took an oral history and performed a comprehensive physical examination. Dr. Baldwin prepared an IME Report indicating his findings. Due to the continuing medical treatment of Respondent Martin, Dr. Baldwin was later provided additional medical records and he issued two Supplemental IME Reports discussing the record reviews.

Following his examination and review of all documents, Dr. Baldwin opined that Respondent Martin was not substantially incapacitated from performance of her usual job duties. Based on Dr. Baldwin's opinion, CalPERS staff denied Respondent Martin's application for disability retirement. Respondent Martin appealed this determination and a hearing was held on February 19, 2015.

Respondent Martin was represented by counsel and offered medical evidence to support her claim of disability. The evidence established that Respondent Martin had several surgeries performed by Dr. Ricardo Avena, including re-release surgeries on her wrists, and cubital tunnel releases.

When considering all of the evidence, the Administrative Law Judge (ALJ) determined that Dr. Baldwin's opinion was persuasive, that Respondent Martin was not permanently disabled or substantially incapacitated from performance of the duties of a Field Representative based upon her orthopedic conditions. The ALJ noted that Dr. Baldwin found no evidence of musculoskeletal impairment that would preclude her ability to perform the customary activity required for her position, though continuing her job duties may cause mild pain or discomfort. There was no evidence to suggest her job duties would lead to further injury or create any risk of developing further injury.

Further, the ALJ found that Respondent Martin failed to present competent medical evidence to support her assertion that at the time she filed her application she was substantially incapacitated for the performance of her usual duties.

The ALJ concluded that Respondent Martin'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.

April 15, 2015

CHRISTOPHER PHILLIPS
Senior Staff Attorney