ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Bonnie L. Jourdan (Respondent Jourdan) was employed as a Licensed Vocational Nurse (LVN) at High Desert State Prison by the California Department of Corrections and Rehabilitation (CDCR). As such, she is a state safety member of CalPERS. Respondent Jourdan applied for industrial disability retirement due to a claimed disability related to her left knee replacement and revision. Respondent Jourdan requested a retroactive retirement date of December 1, 2011. CalPERS reviewed the medical reports and sought further medical reviews, and determined that Respondent Jourdan was not permanently disabled or incapacitated from performance of her duties as an LVN for CDCR. Respondent Jourdan was informed of CalPERS' determination and appealed.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), Respondent Jourdan has the burden of showing that she is substantially incapacitated from performing the usual and customary duties in her position as an LVN. Restrictions based on protection from risk of possible future injury cannot support a finding of disability. (*Mansperger v. Pub. Employees' Ret. System* (1970) 6 Cal.App.3d 873; *Hosford v. Bd. of Administration* (1978) 77 Cal.App.3d 854.)

Prior to the hearing, CalPERS explained the hearing process to Respondent Jourdan and the need to support her case with witnesses and documents. CalPERS provided Respondent Jourdan with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Jourdan's questions and clarified how to obtain further information on the process. CalPERS legal staff had many conversations with Respondent Jourdan informing her of the dates, locations and times of the hearings and the necessity of being present.

The hearing was scheduled for December 2, 2014, at which time Respondent Jourdan did not appear. CalPERS presented medical evidence through Dr. Robert Henrichsen, even though CalPERS was not the party with the burden of proof, and Respondent Jourdan presented no documentary evidence or witness, testimony expert or otherwise. The Administrative Law Judge (ALJ) set a second hearing date for April 3, 2015, so that Respondent Jourdan could have one more chance to present evidence, but Respondent Jourdan also did not appear on the second hearing date.

Respondent Jourdan presented no competent medical evidence to support her claims of disability. CalPERS presented expert medical testimony of an orthopedic surgeon, Dr. Henrichsen, which the ALJ found credibly established that there was no permanent disability that prevented Respondent Jourdan from perfoming her job duties as an LVN. The ALJ issued a proposed decision on April 9, 2015, which held that Respondent Jourdan is not entitled to an industrial disability retirement and that CalPERS' determination should be upheld.

The ALJ concluded that Respondent Jourdan'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 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.

June 17, 2015

CYNTHIA RODRIGUEZ
Senior Staff Attorney