ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Ronda Craig (Respondent) was employed by the Department of Consumer Affairs as a Program Representative II and is a miscellaneous member of CalPERS.

Respondent submitted an application for disability retirement on the basis of orthopedic (neck and back) and cardiovascular (heart) conditions.

CalPERS reviewed written descriptions of Respondent's job duties and relevant medical reports submitted by Respondent. CalPERS also sent Respondent for Independent Medical Examinations with Orthopedic Surgeon, Mohinder Nijjar M.D., and Cardiologist Harcharan Chann, M.D. Based on relevant medical evidence, CalPERS determined Respondent was not substantially incapacitated from performance of her duties as a Program Representative II at the time her application for disability retirement was filed.

Respondent appealed CalPERS determination and a hearing as to whether Respondent is substantially incapacitated from performing her usual and customary job duties was held on May 14, 2015.

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

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to meet her burden of proof with witnesses and documents. CalPERS answered other relevant questions presented by Respondent. CalPERS provided Respondent a copy of the administrative hearing process handbook. Counsel also referred Respondent to the Office of Administrative Hearings website for information regarding self-representation. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

Respondent testified at the hearing regarding her inability to perform her usual and customary job duties due to severe pain and physical limitations. Respondent offered further medical reports from her treating physicians to substantiate her claims.

Joel Bilotta, one of Respondent's former supervisors, testified concerning Respondent's actual job duties. An affidavit concerning Respondent's actual job duties, drafted by Respondent's former supervisor, was also presented into evidence by CalPERS.

Dr. Nijjar testified regarding his examination of Respondent and the diagnosis. Dr. Nijjar opined that Respondent was not restricted from performing any job functions from an orthopedic point of view. Although Dr. Chann did not testify at the hearing, his report was admitted as direct evidence pursuant to a Stipulation by parties, and reviewed by the Administrative Law Judge (ALJ) in reaching her determination.

Respondent testified at the hearing concerning her medical conditions and the medications she is prescribed due to the medical conditions. Respondent also testified regarding her job duties, and entered as direct evidence, per stipulation, various medical records.

The ALJ concluded that Respondent's appeal should be denied based on the persuasive testimony of Dr. Nijjar. 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.

August 19, 2015

PREET KAUR
Staff Attorney