ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Jamela L. Bonner (Respondent) was employed by the California Department of Corrections and Rehabilitation (CDCR) as a Correctional Officer. By virtue of her employment, Respondent was a state safety member of CalPERS. Respondent submitted an application for industrial disability retirement (IDR) on a claimed orthopedic (right wrist) condition. Staff reviewed medical reports regarding Respondent's condition and a written description of her usual and customary duties. Thomas W. Fell, M.D., a board-certified Orthopedic Surgeon, reviewed medical reports regarding Respondent and conducted an Independent Medical Examination (IME) of Respondent. Dr. Fell prepared a written report which contained his observations, findings, and conclusions regarding Respondent. Dr. Fell expressed his opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of a Correctional Officer because of the condition in her right wrist. CalPERS denied Respondent's application for IDR. Both Respondent and CDCR were provided with notice of CalPERS' determination. Respondent appealed CalPERS' determination and a hearing was held on June 17, 2015.

Prior to the 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 pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

Respondent did not appear at the hearing. The Administrative Law Judge (ALJ) found that Respondent had received proper notice of the hearing and that her failure to appear was not excused and/or otherwise explained.

The ALJ received evidence in support of CalPERS' determination to deny Respondent's application for IDR. After reviewing and considering all of the evidence, the ALJ found that Dr. Fell's observation, findings, and conclusions, as expressed and contained in his written report, provided substantial evidence that Respondent was not substantially incapacitated from performing the usual and customary duties of her position as a Correctional Officer for CDCR. Specifically, the ALJ concluded that Dr. Fell "concluded that [Respondent] is physically capable of using a weapon, obviously of paramount importance to a Correctional Officer and the Department of Corrections, and he determined Respondent is not substantially disabled." (Factual Findings 8-11.) (Legal Conclusion No. 5.)

The ALJ concluded that Respondent'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.

September 17, 2015

for Marguerite Leoloum

RORY J. COFFEY
Senior Staff Attorney