

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION**

Respondent Luna seeks reconsideration of the Board of Administration's Decision of November 18, 2015. California Department of Corrections and Rehabilitation (CDCR) employed Carlotta Luna (Respondent Luna) at the Ventura Youth Correctional Facility as an Office Technician. By virtue of her employment, Respondent Luna is an industrial state member of CalPERS subject to Government Code sections 20048 and 21151.

After a hearing on October 8, 2015, the Administrative Law Judge (ALJ) issued a proposed decision explaining that Respondent Luna failed to present evidence that she was substantially incapacitated from the performance of her usual and customary duties as an Office Technician on a permanent basis and denied her appeal. The Board adopted the proposed decision.

In her Petition for Reconsideration, Respondent Luna fails to raise any new arguments or facts. The fact that she received Social Security disability benefits and did not qualify for disability retirement with CalPERS is not unusual. The criteria for Social Security disability benefits as applied are different from the criteria for disability retirement. Social Security takes into account the job opportunities available to the applicant based on age, education, and location. Respondent Luna's age and lack of education combined with her living in a rural area mean the availability of jobs is quite limited. Thus, the threshold to qualify for Social Security disability is quite low.

In the Social Security disability process, the applicant is frequently not required to undergo an independent medical examination. Furthermore, the time period is different from that of CalPERS.

Respondent Luna attached a letter from Dr. Arturo Valderrama, M.D., in which he opines she would experience "extreme difficulties" if she were to return to work. "Extreme difficulties" does not necessarily mean that Respondent Luna is unable to perform the usual and customary duties of her position, which is the requirement to qualify for disability retirement. The note provides no opinion as to Respondent Luna's condition at the time she stopped working, and therefore does not address the issue considered by the Board.

At the administrative hearing, Respondent Luna failed to present evidence supporting her contention that she was substantially incapacitated from the usual and customary duties of her position at the time she applied for disability retirement. Respondent Luna worked as an office technician, which is a very sedentary position. The physical requirements of this position are not strenuous. As the ALJ observed, Respondent Luna showed no difficulty sitting for the duration of the lengthy hearing, although she claimed in her appeal and during her testimony at hearing that she could not sit for long periods of time.

Three doctors testified at the hearing that while Respondent Luna had some medical limitations, these were not of a severity that they would impair her ability to perform the usual and customary duties of an Office Technician.

The Board's Decision is well supported by the evidence. Respondent Luna failed to present any new evidence to change the Board's Decision. For all the reasons stated above, staff argues that the Board deny the Petition for Reconsideration.

Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. Respondent Luna may file a writ petition in Superior Court seeking to overturn the decision of the Board.

December 16, 2015

*for*   
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JEANLAURIE AINSWORTH  
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