ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Dawn M. Brooks (Respondent Brooks) is a state safety member of CalPERS previously employed by Respondent California Correctional Institution, California Department of Corrections and Rehabilitation (CDCR) as a Correctional Officer. Respondent Brooks was approved for CalPERS Industrial Disability Retirement (IDR) on April 17, 2003, on the basis of an orthopedic (right wrist) condition. Respondent Brooks was 36 years old at the time and has remained on IDR since.

On September 3, 2014, Respondent Brooks was notified that under Government Code section 21192, CalPERS was reviewing her disability retirement status. Pursuant to section 21192, a member who retires on disability at an age less than 50 can be required to undergo subsequent medical examination to determine if he or she remains incapacitated from the usual and customary duties of his or her position. At the time of the reevaluation, Respondent Brooks had not yet reached 50 years of age.

CalPERS staff arranged for a new medical examination, and then reviewed that report as well as other relevant medical reports. Dr. G.B. Ha'eri, a board-certified orthopedic surgeon, conducted an Independent Medical Examination (IME) of Respondent Brooks and determined that she was no longer substantially incapacitated from performing her usual and customary job duties at CDCR. Based on this report, CalPERS determined that Respondent Brooks is no longer eligible for IDR.

Respondent Brooks appealed that determination and a hearing was held on October 26, 2016.

CalPERS followed the process to return Respondent Brooks to the workforce. Prior to the hearing, CalPERS explained the hearing process to Respondent Brooks and the need to support her case with witnesses and documents. CalPERS provided Respondent Brooks with a copy of the administrative hearing process pamphlet. CalPERS answered questions from Respondent Brooks and clarified how to obtain further information on the process.

At the hearing, the Administrative Law Judge (ALJ) heard evidence from two witnesses. CalPERS presented the testimony and report of Dr. Ha'eri, who examined Respondent Brooks on December 16, 2014. Respondent Brooks testified on her own behalf.

Dr. Ha'eri testified that after his examination of Respondent Brooks, he found that she was not substantially incapacitated for the performance of her job duties as a Correctional Officer. He explained that Respondent Brooks suffered a contusion to the back of her right hand and wrist after an altercation with an inmate and that such type of injury generally resolves itself within a couple of months. Dr. Ha'eri further testified regarding a medical report authored by Dr. Nijjar that contained a diagnosis of carpel tunnel syndrome. Dr. Ha'eri explained that there was no objective evidence to support

that diagnosis and that it was inconsistent with the mechanics of how Respondent Brooks' injury occurred.

Respondent Brooks testified and introduced documentary evidence. The first document was correspondence from her treating physician in 2003. The second document was the IME report that CalPERS relied on when it initially approved Respondent Brooks for IDR in 2003. The third document was a functional capacity evaluation performed by Thomas Traut. Mr. Traut has a Master's Degree in Exercise Science and Kinesiotherapy.

(ALJ) found that the persuasive medical evidence established that Respondent Brooks is no longer substantially incapacitated for the performance of her usual job duties as a Correctional Officer due to an orthopedic (right wrist) condition.

The ALJ concluded that Respondent Brooks' 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.

December 21, 2016

CHRISTOPHER PHILLIPS
Senior Staff Attorney