ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Rhoda McCormick (Respondent McCormick) applied for service pending disability retirement on the basis of orthopedic (neck and back) conditions. By virtue of her employment as an Attendance Technician with the San Bernardino City Unified School District (Respondent SBCUSD), Respondent McCormick was a local miscellaneous member of CalPERS. Effective November 13, 2014, Respondent McCormick retired for service and has been receiving her retirement allowance since that date.

As part of CalPERS' review of her medical condition, Respondent McCormick was sent for an independent medical examination (IME) to board-certified Orthopedic Surgeon Donald D. Kim, M.D. Dr. Kim interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed medical records, and performed a comprehensive IME examination.

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

Despite proper notice being given to Respondent McCormick, she did not appear at the October 25, 2016 hearing. Due to the failure to appear at the hearing, the default of Respondent McCormick was taken by the Administrative Law Judge (ALJ).

At the hearing, CalPERS made arguments, called Dr. Kim as a witness, and introduced documentary evidence, including medical reports. Dr. Kim testified to his examination and reports.

Dr. Kim's IME report summarized his examination and findings of Respondent McCormick's claimed condition. Dr. Kim's report explained the sudden onset of Respondent McCormick's symptoms, which appeared to be associated with a vice principal employed by Respondent SBUSD. Although Respondent McCormick complained of severe and constant pain, a review of Respondent McCormick's magnetic resonance imaging indicated minimal degenerative changes. Those degenerative changes were consistent with her age. Hence, Dr. Kim's report found no objective evidence of orthopedic trauma or impairment.

Dr. Kim ultimately concluded, in his IME report and at hearing, that Respondent McCormick was not substantially incapacitated from the performance of her usual and customary duties.

The ALJ concluded that Respondent McCormick'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.

February 15, 2017

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