ATTACHMENT B
STAFF'S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION

Anqunette L. Flemmings (Respondent) applied for disability retirement based on orthopedic (neck and low back) conditions. By virtue of her employment as a Customer Service Specialist for Respondent Franchise Tax Board (Respondent FTB), Respondent was a state miscellaneous member of CalPERS.

Respondent filed an application for service pending disability retirement on November 2, 2015, and has been receiving benefits since that time.

As part of CalPERS’ review of Respondent’s medical condition, Harry A. Khasigian, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Khasigian interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Khasigian opined that Respondent was not substantially incapacitated from the performance of her usual and customary job duties.

In order to be eligible for disability retirement, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the basis of the claimed disability must be permanent or of an extended and uncertain duration.

After reviewing all medical documentation and the IME report, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of her position.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on June 20, 2017. Respondent represented herself at the hearing. Respondent FTB did not appear at the hearing.

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.

At the hearing, Dr. Khasigian testified in a manner consistent with his examination of Respondent and the IME report. On examination, Dr. Khasigian found that Respondent had mild degenerative disc disease, without radiculopathy, in the neck and the low back. In addition, Respondent’s MRI’s and x-rays resulted in mild findings. Dr. Khasigian thus diagnosed Respondent with mild degenerative disc disease, mild arthritis, and mild stenosis. Pointing to the lack of objective findings to support the contrary, Dr. Khasigian determined that there were not any job duties that Respondent is unable to perform. Therefore, Respondent is not substantially incapacitated from the performance of her usual and customary job duties.
Respondent testified on her own behalf that she suffers from neck and back pain. Respondent took a promotion as a Customer Service Specialist (CSS) with Respondent FTB that required a daily commute by vanpool to Oakland. Respondent stated that the new position quickly took its toll. After only five months as a CSS in Oakland, Respondent decided to retire due to her pain.

Respondent did not call any physicians or other medical professionals to testify, nor did she offer documentary evidence in support of her case.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Dr. Khasigian was thorough and persuasive, while Respondent did not meet her burden of demonstrating that she was substantially incapacitated from the performance of her usual and customary job duties.

The ALJ concluded that Respondent is not eligible for disability retirement.

The Proposed Decision applies the law to the salient facts of the case. For all the above reasons, Staff argues that the Proposed Decision be adopted by the Board.

September 20, 2017

CHARLES H. GLAUBERMAN
Senior Staff Attorney