ATTACHMENT B

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

Hossein Sotoodeh-Tehrani (Respondent) applied for disability retirement based on orthopedic (neck and shoulder) conditions. By virtue of his employment as a Senior Information Technology Infrastructure Administrator for Respondent Metropolitan Water District of Southern California (Respondent MWD), Respondent was a local miscellaneous member of CalPERS.

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

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

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on July 12, 2017. Respondent represented himself at the hearing. Respondent MWD did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his 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. Kim testified in a manner consistent with his examination of Respondent and the IME report. Dr. Kim’s IME report details his examination of Respondent.

Dr. Kim’s physical examination of Respondent was normal. Although Dr. Kim was asked to examine Respondent’s cervical spine only, he also reviewed Respondent for substantial incapacity based on pain in his lumbar spine, shoulder, and right knee. Respondent complained of tenderness upon palpation to his neck, which Dr. Kim found was symmetric. Respondent’s shoulder, lower back, and knee examinations showed no problems upon examination. Dr. Kim diagnosed Respondent with age related degenerative changes.

Based on his physical evaluation of Respondent along with the review of medical records, Dr. Kim’s medical opinion is that Respondent is not substantially incapacitated from the performance of his usual and customary job duties.
Dr. Vahedifar, who has treated Respondent since November 2014, testified at the hearing. Dr. Vahedifar testified to his diagnosis of torticollis caused by disc degeneration. In addition, Dr. Vahedifar discussed Respondent's lower back disc bulge, which caused misalignment of Respondent's back. While testifying that Respondent has degeneration of the meniscus in the knee, Dr. Vahedifar asserted that the degeneration may be more than just age related arthritis. Dr. Vahedifar concluded that Respondent was disabled from doing his job with Respondent MWD. Dr. Vahedifar testified that he was unfamiliar with the CalPERS disability standard.

Dr. Kim testified that he disagreed with Dr. Vahedifar’s diagnosis of Respondent with cervical torticollis. Dr. Kim explained that there was no evidence of torticollis on Respondent, as the pain and tightness in Respondent’s neck was bilateral and symmetric.

Respondent submitted medical records in support of his case, and also testified on his own behalf about his pain, and the hardship caused by his pain. Respondent also disputed the job duties provided by Respondent MWD. Respondent asserted that about one-third of his time required more physically demanding activities than were outlined in his job descriptions. In support of this contention, Respondent called a former supervisor to testify.

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. Kim’s testimony, which was supported by objective evidence, was entitled to more weight than that of Dr. Vahedifar. The ALJ gave greater weight to Dr. Kim’s testimony as an orthopedic surgeon focusing on muscular skeletal disorders, and 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

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CHARLES H. GLAUBERMAN
Senior Staff Attorney