ATTACHMENT B

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

In December 2013, Respondent Santosh Kumari (Respondent) submitted an application for service pending industrial disability retirement (2013 application). Respondent claimed disability on the basis of a podiatric (left foot) condition and a psychiatric (depression) condition. By virtue of her employment as a Psychiatric Technician Assistant (PTA) for Respondent Department of State Hospitals Napa (Respondent DSN), Respondent was a state safety member of CalPERS. Respondent service retired effective November 15, 2013, and has been receiving a service retirement allowance since that date.

As part of CalPERS' review of Respondent's medical condition, Michael Goldfield, M.D., a board-certified Psychiatrist, performed an Independent Medical Examination (IME). Dr. Goldfield interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Goldfield opined that Respondent was not substantially incapacitated from performing her usual PTA duties for Respondent DSN based on psychiatric reasons. In June 2014, CalPERS informed Respondent that the 2013 application for industrial disability retirement was denied. Respondent was advised of her right to appeal Staff's determination. Respondent did not appeal the determination.

On April 14, 2015, Respondent submitted a second application for disability retirement (2015 application), again claiming disability on the basis of a podiatric (left foot) and psychiatric (depression) condition. Staff treated Respondent's 2015 application as a request for a change in retirement status from service to disability retirement. On May 6, 2015, Staff asked Respondent to provide additional information. Respondent provided additional information on July 27, 2015.

Staff obtained medical records and reports regarding Respondent's conditions from treating physicians, and retained Larry Woodcox, D.P.M., D.C., who conducted an IME of Respondent's podiatric condition. After reviewing the reports, Staff determined that Respondent was not substantially incapacitated from performing her usual duties as a PTA based on her podiatric (left foot) condition. Staff relied on Dr. Goldfield's prior medical opinion that Respondent was not disabled due to a psychiatric (depression) condition.

By letter dated November 17, 2015, CalPERS advised Respondent that her 2015 application for disability retirement was denied based upon the determination that she was not substantially incapacitated from the performance of her duties based on a podiatric (left foot) condition. Respondent appealed this determination.

The matter proceeded to hearing on December 12, 2016. Respondent was represented by counsel at all phases of the hearing. Respondent filed a written motion to introduce evidence of her psychiatric condition. The Administrative Law Judge (ALJ) granted Respondent's motion. CalPERS was allowed to have Respondent evaluated a second
time with respect to her claim of a psychiatric disability. The hearing was continued to May 31, 2017.

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. The disability must be present at the time that the application for disability retirement is submitted to CalPERS.

At the first day of the hearing, Dr. Woodcox testified in a manner consistent with his examination of Respondent and the IME report. Dr. Woodcox found no muscle atrophy in Respondent’s left calf, no ecchymosis and no erythema. Respondent’s range of motion was equal and bilaterally symmetrical. Both vascular and neurological examinations were normal. Her left foot was tender to touch. Dr. Woodcox believed that Respondent had developed a complex regional pain syndrome/RSD in her left foot. He found Respondent to be disabled as of the date of his examination (September 16, 2015), but also stated, "...I cannot determine prior to my evaluation when her disability began..." Dr. Woodcox added that any disability was temporary and that, with proper treatment, Respondent should be able to return to work within one year. Accordingly, Dr. Woodcox’s opinion was that Respondent was not substantially incapacitated at the time that she submitted her application for disability retirement (2015 application).

Respondent was evaluated by Alberto Lopez, M.D., a board-certified Psychiatrist. Dr. Lopez interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. He completed an examination of Respondent and prepared two IME reports summarizing his findings. Based upon his examination and review of records, Dr. Lopez diagnosed Respondent as having “Major Depression, severe, recurrent”. Dr. Lopez expressed his opinion that Respondent was, at the time of his examination (April 19, 2017), substantially incapacitated from performing her usual and customary duties. However, Dr. Lopez noted, “When examined by Dr. Goldfield on April 20, 2014, obviously this patient was not nearly as depressed as she is now. I do not know when she entered into this current state of depression.” Dr. Lopez noted that, “In 2014, [Respondent] tried to return to work and made inquiries to CalPERS about reinstatement from retirement.”

Respondent testified on her own behalf that she injured her left foot at work on November 9, 2010 which caused pain and tenderness. At times, she could not work. Respondent also called her daughter to testify, and she described helping her mother perform necessary tasks of daily living.

Respondent called her treating physician Dr. Rubin to testify on her behalf. The ALJ noted that, “Dr. Rubin admitted that he was not familiar with CalPERS’s standard for disability retirement eligibility.” Also, Dr. Rubin, “did not review [Respondent’s] duty statement or the Physical Requirements form prior to completing the [Physician’s
Report on Disability].” The ALJ did not find his medical opinion persuasive. Respondent submitted additional medical records from her treating physicians to support her appeal, which were admitted as administrative hearsay.

After considering all the evidence, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that Respondent did not meet her burden of proof:

On April 14, 2015, [Respondent] requested to change her retirement status from service to disability. Therefore, she must establish that she was substantially incapacitated as of November 15, 2013, the effective date of her retirement. Respondent failed to meet this burden.

The ALJ concluded that Dr. Rubin’s testimony did not establish disability based upon either a claimed psychiatric or podiatric condition. Comparing the evidence and testimony presented by Respondent with the testimony of the two CalPERS' IMEs, the ALJ concluded that:

Other than Dr. Rubin’s testimony, which was previously addressed, [Respondent] offered no other competent medical evidence to establish an earlier date for her substantial incapacity on the basis of her podiatric or psychiatric condition. Thus, Dr. Woodcox’s finding of substantial incapacity on the basis of her podiatric condition as of September 16, 2015, and Dr. Lopez’s same finding on the basis of her psychiatric condition as of April 19, 2017, are uncontroverted.

The ALJ concluded that Respondent failed to meet her burden of proof and denied her appeal. For all the above reasons, Staff argues that the Proposed Decision be adopted by the Board.

September 20, 2017

RORY J. COFFEY
Senior Staff Attorney