ATTACHMENT B

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

Esmeralda A. Esquivel (Respondent) applied for industrial disability retirement based on her orthopedic (left shoulder, elbow, wrist and hand and neck) conditions on July 27, 2015. By virtue of her employment as a Psychiatric Technician for Respondent California Department of Developmental Services (Respondent DDS), Respondent was a state safety member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Ghol Ha'Eri, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Ha'Eri interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Ha'Eri opined that Respondent was not substantially incapacitated from performing her 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 reports, 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 July 11, 2017. Respondent represented herself at the hearing. Respondent DDS 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. Ha'Eri testified in a manner consistent with his examination of Respondent and the IME report. Dr. Ha'Eri testified about his evaluation and the reasons for his conclusion that Respondent was not substantially incapacitated from the performance of her duties as a Psychiatric Technician for Respondent DDS.

Respondent testified on her own behalf regarding her orthopedic conditions and the limitations they imposed. She further testified that she returned to work full time in January 2017, and has been working without restriction as a Psychiatric Technician for Respondent DDS since then.
Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from her treating physicians to support her appeal.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that when all the evidence is considered, Respondent failed to offer sufficient competent medical evidence to establish that, at the time she applied for disability retirement, she was substantially and permanently incapacitated from performing the usual duties of a Psychiatric Technician. The ALJ found that the medical evidence established that Respondent had recovered from her original injury and was able to return to work full time and without restrictions.

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

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends that the Board modify the Proposed Decision by changing the caption and pages two, ten, eleven, twelve and thirteen of the Proposed Decision to include the word, "industrial" before the words, "disability retirement."

For all the foregoing reasons, staff argues that the Board of Administration should adopt the Proposed Decision, as modified.

September 20, 2017

AUSTA WAKILY
Senior Staff Attorney