ATTACHMENT B

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

Clyde D. Wills (Respondent) was employed by Respondent Salinas Valley State Prison, California Department of Corrections & Rehabilitation (CDCR) as a Correctional Supervising Cook. By virtue of his employment, Respondent was a state safety member of CalPERS.

On April 30, 2003, Respondent submitted an application for industrial disability retirement on the basis of his psychological (depression) and neurological (neck and post concussive syndrome) conditions. CalPERS approved Respondent’s application, and he retired effective March 27, 2003.

As part of its normal course of business, CalPERS routinely reevaluates members receiving a disability retirement allowance to ensure that they remain disabled. CalPERS notified Respondent that his file was under review to determine whether he continued to qualify for disability retirement due to his psychological (depression) and neurological (neck and post-concussive syndrome) conditions.

As part of CalPERS’ reevaluation of Respondent’s psychological condition, Respondent was sent for an Independent Medical Examination (IME) to Denis A. Clegg, M.D., a board-certified Psychiatrist. Dr. Clegg interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed medical records. Dr. Clegg also performed a comprehensive IME. Dr. Clegg opined that Respondent was no longer substantially incapacitated from performing his job duties on the basis of his psychological condition.

CalPERS also referred Respondent to Michael Bronshvag, M.D., a board certified Neurologist, to review his neurological neck and post-concussive syndrome conditions. Dr. Bronshvag interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints and reviewed medical records. Dr. Bronshvag also performed a comprehensive IME. Dr. Bronshvag opined that Respondent was not substantially incapacitated from performing his job duties on the basis of his neurological condition.

In order to remain eligible for disability retirement, competent medical evidence must demonstrate that the individual remains substantially incapacitated from performing the usual and customary duties of his former position. The injury or condition which is the basis for the 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 no longer substantially incapacitated, was no longer eligible for industrial disability retirement and should therefore be reinstated to his former position as a Correctional Supervising Cook.
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 June 22, 2017. Respondent represented himself at the hearing. Respondent CDCR 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.

CalPERS presented the medical reports of Dr. Clegg and Dr. Bronshvag at the hearing. Respondent testified on his own behalf. Respondent testified about the duties of his former position as a Correctional Supervising Cook. He also testified that, at the time of the hearing, he was working full-time as a baker for Saint Lucas Hospital in Houston, Texas. Respondent testified that he was able to perform the duties of his job as a baker without any medical restrictions. Respondent did not call any physicians or other medical professionals to testify.

After considering all of the evidence introduced as well as arguments by the parties at the hearing, the ALJ denied Respondent’s appeal. The ALJ found that CalPERS presented persuasive, uncontested medical evidence that Respondent is no longer permanently and substantially incapacitated.

For these reasons, staff argues that the Board of Administration should adopt the Proposed Decision.

September 20, 2017

AUSTA WAKILY
Senior Staff Attorney