ATTACHMENT B
STAFF'S ARGUMENT
STAFF’S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Respondent Linda Mosley (Respondent) petitioned the Board of Administration to reconsider its adoption of the Administrative Law Judge’s (ALJ) Proposed Decision dated June 5, 2017. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

Respondent applied for industrial disability retirement on the basis of psychological (Post-Traumatic Stress Disorder, chronic fatigue) conditions. CalPERS denied the application, and Respondent appealed. A hearing was held on May 11, 2017. Respondent did not appear at the hearing, and the matter proceeded as a default pursuant to Government Code section 11520. CalPERS, however, still presented its case at hearing, and offered the oral testimony and Independent Medical Examination (IME) report of Maria Acenas, M.D., who evaluated Respondent to determine whether she was substantially incapacitated. After considering the evidence presented, the ALJ issued a Proposed Decision denying Respondent’s appeal, which the Board adopted.

In her Petition for Reconsideration, Respondent argues that CalPERS has ignored the reports of four other doctors who found her disabled. However, the IME report of Dr. Acenas, which was offered into evidence at hearing and considered by the ALJ, references, summarizes, and takes into consideration the reports of the doctors cited by Respondent in her Petition. Thus, they were considered as part of the IME, and were part of the evidentiary record before the ALJ. Respondent bore the burden to prove substantial incapacity, including the burden to present competent medical evidence at the hearing in support of her appeal. She did not, and her Petition does not cure her default or address her failure to present evidence.

For these reasons, no new evidence has been presented by Respondent that would justify reconsideration of the ALJ’s determination in this case. The Proposed Decision that was adopted by the Board at the August 16, 2017, meeting was well reasoned and based on the credible evidence presented at hearing. Thus, Respondent’s Petition for Reconsideration should be denied.

September 20, 2017

[Signature]

KEVIN KREUTZ
Senior Attorney