ATTACHMENT B

STAFF'S ARGUMENT
STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Respondent Melina L. Riebling (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision after Remand dated June 9, 2017. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

No new evidence, or argument, has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision after Remand that was adopted by the Board at the August 16, 2017, meeting was well reasoned and based on the credible evidence presented at hearing.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ concluded that the CalPERS IME's opinion that Respondent was not substantially incapacitated had "more convincing force" than Respondent's evidence for several reasons. Dr. Segil is an Orthopedic Surgeon and Respondent's claimed disabling conditions were orthopedic in nature, so his opinion carries greater weight. Dr. Segil observed and testified regarding the significance of at least four indicators of symptom exaggeration. Dr. Segil's review and interpretation of the MRI studies were, in essence, undisputed. Respondent was able to perform her job duties for years while telecommuting and it was not established that the cessation of telecommuting resulted in Respondent's inability to perform her job duties. Dr. De La Flor's opinion that Respondent was disabled was based on more than just orthopedic issues, such as poorly controlled hypertension and diabetes, and anger or anxiety related to her employer's denial of telecommuting. Finally, the ALJ, seemingly skeptical of Respondent's claims regarding not being able to perform simple tasks, found that:

"...[Respondent] apparently engaged in frequent computer use even after she stopped working. In March 2013, she complained to Dr. De La Flor of a trigger thumb from '[t]yping and us[ing] the mouse 10-12hrs per day.'(Factual Finding 11.)" (Legal Conclusion No. 3 (e.).)

The ALJ concluded that Respondent did not meet her burden of proof. The ALJ denied Respondent's appeal and affirmed Staff's determination that Respondent is not eligible for disability retirement. The Board adopted the ALJ's Proposed Decision after Remand.

The Petition for Reconsideration is simply an almost identical, word-for-word repetition of the Argument submitted by Respondent previously with regard to the Proposed Decision. The Board has already considered, and rejected, all of the arguments made by Respondent. Therefore, Respondent's Petition should be denied.

September 20, 2017

Rory J. Coffey
Senior Attorney