ATTACHMENT B

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

Respondent Gloria A. Lugo (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge’s (ALJ) Proposed Decision dated September 28, 2017. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the September 20, 2017 meeting was well reasoned and based on the credible evidence presented at hearing. Respondent argues that the Board should consider “medical information and letter” from her treating oncologist, Mustajeeb Haseeb, M.D. In the report of May 25, 2016 (Exhibit 8), the CalPERS Independent Medical Examiner (IME) noted for one full page his review of medical records prepared by Dr. Haseeb. A copy of the IME report was included in the documentary evidence reviewed and considered by the ALJ in preparing the Proposed Decision.

Most notably, the Board is reminded that Respondent failed to appear at the hearing on September 12, 2017. The ALJ found that CalPERS did provide Respondent with proper and adequate notice of the date, time, and location of the hearing. Respondent did not and has not offered any explanation for her failure to appear at the hearing.

The one page letter from Dr. Haseeb which Respondent includes in her Petition for Reconsideration is clearly improper “after the fact” proffered evidence. The letter is dated November 13, 2017, a date after the administrative appeal hearing, and a date after the issuance of the Proposed Decision. Additionally, even if the Board were to consider the November 13, 2017 letter from Dr. Haseeb, it is administrative hearsay evidence, and as such, cannot by itself support a finding in favor of Respondent. Finally, again if the Board were to consider the November 13, 2017 letter from Dr. Haseeb, the evidentiary weight to be given its contents would have to be minimal. Dr. Haseeb does not state whether he is familiar with and/or understands the CalPERS standard for eligibility for disability retirement (substantial incapacity from performing the usual and customary duties of the position). Therefore, his conclusion that Respondent “is unable to work” is unsupported by factual references. In other words, it is not “competent medical evidence”, which is a statutorily required element to support a finding of eligibility for CalPERS disability retirement.

December 20, 2017

RORY J. COFFEY  
Senior Attorney