ATTACHMENT B

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

Respondent Carole M. Allen (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge’s (ALJ) Proposed Decision dated September 25, 2017. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

Petitioner’s request merely rehashes the evidence presented at hearing and considered by the Administrative Law Judge (ALJ). She argues that the CalPERS’ Independent Medical Examiner (IME), Dr. Balani, did not personally examine Respondent after she underwent surgery to her foot, and that her opinions on the use of a custom orthotic to assist Respondent were speculative. To the contrary, the ALJ credited Dr. Balani as being more persuasive on the question of substantial incapacity, and the record before the ALJ clearly demonstrated that Dr. Balani reviewed and took into consideration Respondent’s post-operative report when offering her medical opinions at hearing. The record also demonstrated that the ALJ found Dr. Balani’s opinion more credible on the role of the custom orthotic, and that her opinion was not materially controverted by Respondent’s testifying physician.

Respondent also takes issue with an excerpt of the adopted Proposed Decision, which states that workers’ compensation findings are not evidence of substantial incapacity for purposes of determining eligibility for CalPERS’ disability retirement benefits. This point of law is well-established and not disputed by Respondent. These matters were litigated at the administrative hearing, presented during closing argument, and should have been raised by Respondent when the CalPERS’ Board considered whether to adopt the ALJ’s Proposed Decision. In summary, 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 November 15, 2017, meeting was well reasoned and based on the credible evidence presented at hearing.

December 20, 2017

KEVIN KREUTZ
Senior Attorney