ATTACHMENT B

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

James A. Jenkins (Respondent) applied for industrial disability retirement based on an otolaryngological (sinusitis) condition. By virtue of his employment as a Parole Agent I for Respondent Division of Adult Parole Operations, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

Respondent filed an application for service pending industrial disability retirement on 12/2/2015 and has been receiving benefits since that time.

As part of CalPERS' review of Respondent's medical condition, Konstantin Salkinder, M.D., a board-certified Otolaryngologist, performed an Independent Medical Examination (IME). Dr. Salkinder interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Salkinder opined that Respondent was not substantially incapacitated from performing his usual and customary job duties.

In order to be eligible for disability retirement, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the basis of the claimed 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 not substantially incapacitated from performing the duties of his position.

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 September 13, 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.

At the hearing, Dr. Salkinder testified in a manner consistent with his examination of Respondent and the IME report. At his examination with Dr. Salkinder, Respondent complained of fatigue, sensational ear popping, occasional nasal stiffness and drainage, coughing, and phlegm in the morning. Upon physical examination by Dr. Salkinder, Respondent's nose was essentially normal. Using a flexible fiberoptic nasopharyngoscopy to visualize the middle meatus and posterior nasopharynx, Dr. Salkinder found no evidence of polyp or purulent drainage.
Dr. Salkinder's examination of Respondent's neck revealed no evidence of paracervical or trapezial muscle tenderness with full range of motion. Both of Respondent's eardrums were intact and mobile, and without evidence of damage or infection to the middle ear, eardrums, or external auditory canal. In addition, Dr. Salkinder's examination of face and pharynx was normal.

Dr. Salkinder's medical opinion is that Respondent's examination and medical records were essentially normal. Thus, Respondent is able to perform his usual and customary job duties, and is not substantially incapacitated.

Respondent testified on his own behalf at the hearing. Respondent began noticing mold at his office in 2006. In 2011, Respondent testified that he developed cold symptoms that never went away. The symptoms included nasal congestion, weakness and fatigue, postnasal drainage, and a headache. The building in which Respondent's office was located was treated for mold, although Respondent stated that his symptoms did not improve after those treatments. Respondent testified that he stopped working in December 2015, because of his condition.

Respondent submitted medical records from his treating physicians to support his appeal. Although Respondent's medical records included a diagnosis of upper airway disease involving the nasal mucosa and sinuses, Dr. Salkinder's opinion remained unchanged. Also, none of Respondent's medical records mentioned fatigue as a subjective complaint, or as a diagnosis by a physician.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent is not substantially incapacitated from performing his usual and customary job duties on the basis of an otolaryngological condition.

The ALJ concluded that Respondent is not eligible for industrial disability retirement.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

December 20, 2017

CHARLES H. GLAUBERMAN
Senior Attorney