ATTACHMENT B

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

Carla M. Sims-Cardwell (Respondent) was employed by Respondent Department of State Hospitals - Vacaville (Respondent DSH-Vacaville) as a Medical Technical Assistant (Psychiatric). By virtue of her employment, Respondent was a state safety member of CalPERS. On or about March 29, 2010, Respondent submitted an application for industrial disability retirement on the basis of an orthopedic (right knee) condition. Respondent's application was approved by CalPERS and she retired effective September 4, 2010.

In 2014, CalPERS staff notified Respondent that CalPERS conducts reexamination of persons on disability retirement, and that she would be reevaluated for purposes of determining whether she remains substantially incapacitated and is entitled to continue to receive an industrial disability retirement.

In order to remain eligible for disability retirement, competent medical evidence must demonstrate that the individual remains substantially incapacitated from performing the usual and customary duties of her former position. The injury or condition which is the basis for the disability must be permanent or of an extended and uncertain duration.

As part of CalPERS' review of Respondent's medical condition, Respondent was sent for an Independent Medical Examination (IME) to Arun M. Mehta, M.D., a board-certified Orthopedic Surgeon. Dr. Mehta interviewed Respondent, reviewed her work history and job description, obtained a history of her past and present complaints, reviewed medical records, and reviewed investigative materials. Dr. Mehta also performed a comprehensive IME. Dr. Mehta ultimately opined that Respondent was not substantially incapacitated from performing her usual and customary job duties.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was no longer substantially incapacitated, was no longer eligible for industrial disability retirement, and should therefore be reinstated to her former position as a Medical Technical Assistant.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on September 5, 2017. Respondent was represented by counsel. Respondent DSH-Vacaville did not appear.

At the hearing, Dr. Mehta testified in a manner consistent with his examination of Respondent and the report prepared after the IME. On his physical examination, Dr. Mehta found the range of motion of Respondent's right knee to be abnormal. In addition, there was a two centimeter difference in the measurements of Respondent's right and left lower extremities above the patella and below the tibial tubercle. After the examination of Respondent, Dr. Mehta found Respondent to still be substantially incapacitated from the performance of her usual and customary job duties. In reaching
his initial conclusion, Dr. Mehta relied on the Physical Requirements of Respondent's position as a Medical Technical Assistant.

Following his initial determination, Dr. Mehta reviewed CalPERS' investigative report. The report, which was introduced as direct evidence through the testimony of CalPERS staff, described Respondent engaging in certain activities. Those activities included walking without a cane, going to the post office and carrying boxes, and going to the dog park without a cane. Because of the activities described in the investigative report, Dr. Mehta changed his determination as to Respondent's ability to perform her usual and customary job duties. A DVD with the sub rosa footage of Respondent performing the activities described in the report was also introduced at hearing, although Dr. Mehta did not review or rely on the DVD when making his determination.

Because of the information obtained in the investigative report, Dr. Mehta's medical opinion is that Respondent can perform the duties of her position and is therefore no longer substantially incapacitated.

Respondent testified on her own behalf. Respondent testified that her injury occurred while on duty and that she had surgery after her injury. Respondent also testified that she is unable to perform her job duties because of her continued problems with her knee, which has caused problems to other parts of her body. So, Respondent ultimately disagreed with the opinion of Dr. Mehta.

The ALJ did not find the evidence presented by Dr. Mehta to be persuasive. The ALJ determined that Dr. Mehta's reasoning behind his change in determination was insufficient to sustain a finding that Respondent is no longer substantially incapacitated from performing her usual and customary job duties. In support of her decision, the ALJ concluded that Dr. Mehta's opinion was not supported by the evidence presented at hearing.

After considering all of the evidence introduced as well as arguments by the parties at the hearing, the ALJ granted Respondent's appeal. The ALJ found that CalPERS did not meet its burden of producing competent medical evidence to demonstrate that Respondent is able to perform her usual and customary duties as a Medical Technical Assistant.

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

December 20, 2017

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