ATTACHMENT B

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

Jayne M. Bartholme (Respondent) applied for industrial disability retirement based on a cardiologic (hypertension) condition. By virtue of her employment as a Lieutenant for Respondent California Highway Patrol (Respondent CHP), Respondent was a state safety member of CalPERS.

Respondent filed an application for service pending industrial disability retirement on December 8, 2015 and has been receiving benefits since that time.

As part of CalPERS' review of Respondent's medical condition, Hashem M. Fatemi, M.D., a board-certified physician for Internal Medicine/Cardiovascular Disease, performed an Independent Medical Examination (IME). Dr. Fatemi interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Fatemi initially opined that Respondent was able to perform her usual and customary duties as a Lieutenant with Respondent CDCR. In addition, Dr. Fatemi opined that better control of her blood pressure would lead to reduced symptoms and better conditioning for performing her job duties. After issuing his IME report, Dr. Fatemi was provided updated medical records. Dr. Fatemi issued a supplemental report that confirmed his initial finding that Respondent is not incapacitated from performing her usual and customary 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 her position.

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 October 3, 2017. Respondent represented herself at the hearing. Respondent CHP did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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. Fatemi testified in a manner consistent with his examination of Respondent and the IME report. Dr. Fatemi testified that when he examined Respondent, her blood pressure was elevated slightly above the normal limits and that if her elevated blood pressure was consistent and got worse it would prevent Respondent
from performing her usual duties. It was Dr. Fatemi's testimony that with dietary measures and medication, Respondent should be able to control her blood pressure. Dr. Fatemi testified that after evaluating Respondent, he received a progress report from her treating physician that demonstrated Respondent's blood pressure was improving. It was Dr. Fatemi's opinion, in part based on the significant improvement in Respondent's blood pressure, that she was not prevented from performing her usual and customary duties as a result of her medical condition. Therefore, Respondent is not substantially incapacitated.

Respondent testified on her own behalf that she had a history of hypertension dating back to 2007. Respondent testified that on November 17, 2014, she had a particularly stressful day at work and based on this event and her worsening condition she filed a claim for disability. Respondent challenged Dr. Fatemi's IME report and Supplemental IME report. In particular, Respondent pointed out that the reports contained many errors, including the misspelling of doctors' names, an incomplete summary of her duties, and the report was not thorough with respect to Dr. Fatemi's findings.

Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from her treating doctors to support her appeal.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that the abbreviated description of Respondent's job duties and the misspelling of the names of Respondent's treating physicians did not undermine the substance of Dr. Fatemi's credible opinion that Respondent is not substantially incapacitated. The ALJ found that Dr. Fatemi credibly testified that he did a full review of Respondent's medical records. Furthermore, the ALJ found that "Dr. Fatemi lucidly explained how the objective medical data establish respondent's hypertension and how that data support his opinion that respondent is not incapacitated from performing her duties as a lieutenant."

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

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends that the word "industrial" be added before "disability retirement" in the caption of the Proposed Decision, and on page nine.

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

December 20, 2017

JOHN SHIPLEY
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