ATTACHMENT B

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

Jenetta K. Thompson (Respondent) applied for disability retirement based on orthopedic (back, neck, left arm, left knee, and shoulder) conditions. By virtue of her employment as a Program Technician for Respondent California Department of Corrections & Rehabilitation - Division of Adult Parole Operations (Respondent CDCR), Respondent was a state industrial member of CalPERS.

Respondent filed an application for disability retirement on July 6, 2015.

As part of CalPERS' review of Respondent's medical condition, Robert J. Kolesnik, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Kolesnik interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Kolesnik opined that Respondent is not substantially incapacitated from the performance of her 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 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 2, 2017. Respondent represented herself 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 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. Kolesnik testified in a manner consistent with his examination of Respondent and the IME reports. Dr. Kolesnik conducted a comprehensive exam of Respondent’s entire body. Dr. Kolesnik's medical opinion is that there are some objective findings. Specifically, Dr. Kolesnik’s assessment of Respondent was the following: chronic cervical strain; cervical osteoarthritis; left shoulder strain/sprain with calcific rotator cuff tendinitis and arthritis; left carpal tunnel syndrome, status post release; chondromalacia of the left scaphoid and left radius at the radiocarpal joint, status post arthroscopic chondroplasty; chronic lumbosacral strain and left knee sprain/strain with osteoarthritis. However, Dr. Kolesnik’s opinion and testimony were
that none of his objective findings would prevent Respondent from performing all of her usual duties as a Program Technician. Therefore, Respondent is not substantially incapacitated.

Respondent testified on her own behalf that her job duties include dictation of probation violation reports, filing, typing, faxing, shredding and handling incoming and outgoing mail. Respondent testified that she currently works in the same Program Technician position with Respondent CDCR but that she has been working on "modified duty" since November 2, 2017. Respondent testified that she filed her disability retirement application in September 2015 because she had been sent home by her supervisor on three separate occasions due to an inability to perform her job. She did not work for approximately three years (2013-2016) until her supervisor contacted her in October 2016 asking her to return to work. She testified that although she works in the same position as when she filed for disability retirement, she does so in constant pain. She testified that she intends to work in this modified role as long as she can continue to perform her duties.

Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from her treating physicians to support her appeal. Respondent’s medical records generally showed the medications she is currently taking as well as the treatment she’s currently receiving from her primary care doctor.

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 has the burden to establish she is entitled to receive disability retirement benefits. The ALJ found that Respondent failed to meet her burden to prove that she is substantially incapacitated from the performance of her usual and customary job duties.

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

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

December 20, 2017

JOHN SHIPLEY
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