ATTACHMENT B

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

Johnny E. Palmer (Respondent) applied for disability retirement based on an orthopedic (right carpal tunnel syndrome) condition. By virtue of his employment as a Lead Custodian II for Respondent Elk Grove Unified School District (Respondent Elk Grove USD), Respondent was a state miscellaneous member of CalPERS.

Respondent filed an application for service pending disability retirement on April 5, 2016. He retired from service effective April 13, 2016 and has received his retirement allowance since that time.

As part of CalPERS' review of Respondent's medical condition, Harry A. Khasigian, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Khasigian interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Khasigian opined that Respondent was not substantially incapacitated from performing his job duties as a Lead Custodian II.

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 October 24, 2017. Respondent represented himself at hearing. Respondent Elk Grove USD 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. Khasigian testified in a manner consistent with his examination of Respondent and the IME reports. Dr. Khasigian testified that Respondent's physical examination was essentially normal. He further testified that Respondent did not display surgical complication of his right wrist or an advanced median nerve dysfunction. Dr. Khasigian testified that Respondent had full range of motion of his fingers, had no atrophy of his hand and had normal motor function. Dr. Khasigian opined that Respondent is not substantially incapacitated from performing the usual and customary duties of a Lead Custodian II for Elk Grove USD.
Respondent testified on his own behalf regarding his job duties and the limitations due
to his orthopedic condition. Respondent did not call any medical professionals to testify.
Respondent did not submit medical records from his treating physicians to support his
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 Respondent did not present
competent, objective medical evidence to establish that he was permanently and
substantially incapacitated from performing his duties as a Lead Custodian II at the time
he filed his disability retirement application. 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

AUSTA WAKILY
Senior Attorney