ATTACHMENT B

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

Muriel S. McKenzie (Respondent) applied for industrial disability retirement based on orthopedic (back, neck and arms) conditions. By virtue of her employment as an Officer 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 April 11, 2016 and has been receiving benefits since June 3, 2016.

As part of CalPERS' review of Respondent's medical condition, Robert K. Henrichsen, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Henrichsen interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Henrichsen opined that there are no job duties that respondent could not perform.

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 report, 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 9, 2017. Respondent was represented by counsel at the hearing. Respondent CHP did not appear at the hearing.

At the hearing, Dr. Henrichsen testified in a manner consistent with his examination of Respondent and the IME report. Dr. Henrichsen's medical opinion is that although Respondent has degenerative disease in her cervical, thoracic, and lumbar spine, the degenerative disease is not serious and she is able to perform her job duties. Dr. Henrichsen testified that Respondent was functioning reasonably well based on his objective findings. Therefore, Respondent is not substantially incapacitated.

Respondent testified on her own behalf that she suffered an injury in 1995 when she was hit by a van and another injury in 1996 when she fell off of her bike. Respondent testified that she was out of work for a short amount of time due to these injuries but eventually returned to work full duty until 2014. Respondent testified that in January 2014 she felt a burning sensation up her back, arms and head, when she stepped on her driver's seat to remove an antenna. This injury caused her extreme pain and rendered her unable to perform her job duties. Respondent did not call any physicians
After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found Respondent failed to meet her burden of proof that she is substantially incapacitated from performing her job duties. The ALJ found Dr. Henrichsen's medical opinion persuasive and held that Respondent's "symptoms are largely subjective, and not supported by the objective findings."

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

Margaret Seabour
Senior Attorney