ATTACHMENT B

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

Kelly A. Stephens (Respondent) applied for disability retirement based on an orthopedic (cervical spine) condition. By virtue of her employment as an Administrative Services Manager for Respondent Stockton East Water District (Respondent District), Respondent was a local miscellaneous member of CalPERS.

Respondent filed an application for service pending disability retirement on September 27, 2016, and has been receiving service retirement benefits 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 her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Khasigian opined that Respondent is not substantially incapacitated from performing her usual and customary job duties by her mild spinal issues.

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 July 11, 2018. Respondent represented herself at the hearing. Respondent District 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. Khasigian testified in a manner consistent with his examination of Respondent and the IME report. Dr. Khasigian’s medical opinion is while Respondent has some mild degenerative disc disease it is not restrictive of her activities or ability to perform her job duties as an office manager. Therefore, Respondent is not substantially incapacitated.
Respondent testified on her own behalf that she has had discomfort for some time in her neck and soreness, with stiffness, stabbing and throbbing pain. Respondent did not call any physicians or other medical professionals to testify. Although offered an opportunity to present medical records, Respondent determined not to submit medical records from her treating physicians 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 IME Dr. Khasigian was persuasive in his conclusion that Respondent was not substantially incapacitated, and that Respondent did not establish through medical evidence that she was incapacitated from the duties of her position.

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.

September 26, 2018

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CYNTHIA RODRIGUEZ
Senior Attorney