ATTACHMENT B

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

Gregory S. Covert (Respondent) was employed by Respondent California State Prison, Corcoran, California Department of Corrections and Rehabilitation (Respondent CDCR) as a Correctional Officer. By virtue of his employment, Respondent was a state safety member of CalPERS. On or about December 11, 2012, Respondent submitted an application for industrial disability retirement on the basis of a psychological (stress, anxiety, depression) condition. Respondent’s application was approved by CalPERS and he retired effective August 24, 2013.

In March 2016, CalPERS team members notified Respondent that CalPERS conducts reexamination of persons on disability retirement, and that he would be reevaluated for purposes of determining whether he remains substantially incapacitated and is entitled to continue to receive a industrial disability retirement.

In order to remain eligible for disability retirement, competent medical evidence must demonstrate that the individual remains substantially incapacitated from performing the usual and customary duties of his former position. The injury or condition which is the basis for the disability must be permanent or of an extended and uncertain duration.

As part of CalPERS' review of Respondent’s medical condition, Respondent was sent for an Independent Medical Examination (IME) to Robindra Paul, M.D., board-certified in psychiatry and forensic psychiatry. Dr. Paul interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed medical records. Dr. Paul also performed a comprehensive IME. Dr. Paul opined that Respondent suffered from an unspecified depressive disorder, and an unspecified anxiety disorder, received treatment for both conditions, and improved to the point that he reported no depression or anxiety during the IME. Dr. Paul noted no symptoms of either condition, or of any other psychiatric maladies. Regarding Respondent's trauma related disorder, Dr. Paul determined Respondent to be in remission because Respondent had not thought about the incident for a year prior to CalPERS notifying him of the upcoming IME. Dr. Paul ultimately opined that Respondent was not substantially and permanently incapacitated from performing the usual duties of a Correctional Officer.

After reviewing all medical documentation and the IME report, CalPERS determined that Respondent was no longer substantially incapacitated, was no longer eligible for industrial disability retirement, and should therefore be reinstated to his former position as a Correctional Officer.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. A hearing was held on July 2, 2018. Respondent represented himself 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 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. Paul testified in a manner consistent with his examination of Respondent and the report prepared after the IME. Dr. Paul’s medical opinion is that Respondent can perform the duties of his position and is therefore no longer substantially incapacitated.

Respondent testified on his own behalf. Respondent testified that while his overall mental condition was “significantly better,” he does not believe he can return to work as a Correctional Officer. Respondent did not call any physicians or other medical professionals to testify and did not submit medical records from treating physicians to support his appeal.

At the hearing, Respondent also testified that he disagreed with the results of Dr. Paul’s examination and report and surmised that he may have had a “good day” on the date Dr. Paul evaluated him.

The ALJ found that the only competent medical evidence offered at the hearing was presented by Dr. Paul, and that this evidence established that Respondent is no longer substantially incapacitated from performing his duties as a Correctional Officer for Respondent CDCR.

After considering all the evidence introduced as well as arguments by the parties at the hearing, the ALJ denied Respondent’s appeal. The ALJ found while Respondent testified credibly that witnessing a horrific murder while on the job was a life-changing event, Respondent did not establish, with competent medical evidence, that he remains substantially incapacitated from performing the duties of a Correctional Officer because he offered no medical testimony or documentary evidence to challenge Dr. Paul’s findings. Importantly, Respondent had not thought about the incident for over a year prior to being notified by CalPERS of the reevaluation.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to “make technical or other minor changes in the Proposed Decision.” There are two instances in the Proposed Decision that omit the word “industrial” before the term “disability retirement”. In order to avoid ambiguity that Respondent’s disability benefit has been “industrial”, staff recommends that the word “industrial” be inserted before the words “disability retirement” in the caption as well as paragraph one on page two of the Proposed Decision.
For all the above reasons, staff argues that the Proposed Decision be adopted by the Board as modified.

September 26, 2018

CHRISTOPHER PHILLIPS
Senior Attorney