ATTACHMENT B

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

Tonja L. Trent (Respondent) applied for industrial disability retirement based on orthopedic (right shoulder tendinitis with impingement, cervical and lumbar degenerative disc disease, right hip sprain, and vertebrogenic headaches) conditions. By virtue of her employment as a District Representative I with Department of Housing and Community Development (HCD), Respondent was a state safety member of CalPERS. Respondent filed an application for industrial disability retirement on February 16, 2017. As part of CalPERS’ review of Respondent’s medical condition, Robert 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 Respondent was not incapacitated from performing any of her job duties.

In order to be eligible for industrial 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. A hearing was held on July 25, 2018. Respondent did not appear at the hearing. Respondent HCD 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. Henrichsen testified in a manner consistent with his examination of Respondent and the IME report. Dr. Henrichsen’s medical opinion is that Respondent does not have any orthopedic incapacity that affects any of her job duties or precludes her from performing her job duties. Therefore, Respondent is not substantially incapacitated.
After considering all of the evidence introduced, the ALJ denied Respondent’s appeal. The ALJ found that Respondent had not presented any evidence and had not carried the burden to present evidence of her claimed incapacity to perform her job duties. The ALJ also held that Dr. Henrichsen’s testimony was persuasive and comprehensive and supported by the medical tests.

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.

September 26, 2018

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Senior Attorney