ATTACHMENT B

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

Sherry C. Donnell (Respondent) applied for service pending industrial disability retirement based on orthopedic (neck and back) conditions. By virtue of her employment as a Parole Agent I (Adult Parole) for Respondent Parole and Community Services Division, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

Respondent retired for service effective March 18, 2017, and has been receiving benefits since that time.

As part of CalPERS’ review of Respondent’s medical condition, Alice Martinson, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Martinson interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints and reviewed her medical records. Dr. Martinson opined that Respondent was not substantially incapacitated from performing the usual and customary duties of a Parole Agent I.

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 of the 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 31, 2018. Respondent represented herself 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 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.

CalPERS presented the IME report of Dr. Martinson at the hearing. Respondent testified on her own behalf regarding her job duties and her orthopedic conditions. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted 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 a preponderance of the competent medical evidence did not establish that Respondent is substantially incapacitated from performing the usual and customary duties of a Parole Agent I with CDCR.

The ALJ concluded that Respondent is not eligible for industrial disability retirement.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to “make technical or other minor changes in the Proposed Decision.” In order to avoid ambiguity, staff recommends that the Board modify the Proposed Decision, by inserting the word, “industrial” before the words, “disability retirement,” on page two, paragraph two; page three, paragraph six; page four, paragraph one and page five, paragraphs five and six as well as in footnote number 2 of the Proposed Decision.

For all the above reasons, staff argues that the Proposed Decision, as modified, be adopted by the Board.

September 26, 2018

AUSTA WAKILY
Senior Attorney