ATTACHMENT B

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

Joseph Navarro (Respondent) applied for industrial disability retirement based on an orthopedic (left shoulder) condition. By virtue of his employment as a Correctional Officer for Respondent California Institution for Women, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

Respondent filed an application for industrial disability retirement on March 20, 2017.

As part of CalPERS’ review of Respondent’s medical condition, Jerrold M. Sherman M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Sherman interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Sherman opined that Respondent is not substantially incapacitated from performing his usual and customary job duties as a Correctional Officer.

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 his position.

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 31, 2018. Respondent did not appear 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, CalPERS introduced evidence that it served a Notice of Hearing on Respondent and Respondent CDCR at their last known addresses. In addition, CalPERS introduced evidence that Respondent and Respondent CDCR each signed and returned a certified mail return receipt establishing that Respondent and Respondent CDCR were properly served notice of the hearing date, time, and location.
At the hearing, Dr. Sherman testified in a manner consistent with his examination of Respondent and the IME report. Although Respondent had a prior arthroscopic debridement surgery in December 2012, Dr. Sherman found no abnormalities of an orthopedic, physical, or mental nature, which would prevent Respondent from performing his work as a Correctional Officer. Dr. Sherman found that Respondent is capable of performing all of the described work activity, including, but not limited to, running, fighting and firing firearms. Dr. Sherman also found that Respondent does not represent a hazard to either himself or others with returning to work. Dr. Sherman’s medical opinion is that Respondent is able to perform all of the usual and customary duties of a Correctional Officer. Therefore, Respondent is not substantially incapacitated.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that Respondent had the burden of proof in establishing his right to an industrial disability retirement. The ALJ found Respondent did not produce any medical evidence to show that he is entitled to industrial disability retirement benefits.

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

JOHN SHIPLEY
Senior Attorney