ATTACHMENT B

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

Regina Earl (Respondent) applied for industrial disability retirement based on orthopedic conditions (neck, shoulder, and arm). By virtue of her employment as a Psychiatric Technician Assistant for Respondent Department of State Hospitals, Napa (Respondent DHS), Respondent was a state safety member of CalPERS.

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 concluded that there are no specific job duties that Respondent is unable to perform, and that Respondent is not substantially incapacitated from performing the duties of a Psychiatric Technician Assistant.

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.

Respondent filed an application for industrial disability retirement on November 30, 2016. CalPERS denied her application on March 21, 2017. 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 (OAH). A hearing was held on June 20, 2018. Respondent represented herself at the hearing. Respondent DHS 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 that Respondent had normal lumbar, thoracic and cervical spine movement, without spasm or guarding. Although he observed voluntary restricted range of motion in her cervical spine, there was an increased range of motion when Respondent was distracted. Medical records, including an electromyography test showed moderate compression, but Dr. Khasigian’s
clinical findings did not find either carpal tunnel syndrome or cubital tunnel syndrome. Therefore, he opined that Respondent is not substantially incapacitated.

Respondent testified on her own behalf that she would love to return to work, but cannot physically do her job. Respondent testified that she continues to experience pain and that she would be unable to perform tasks required of a Psychiatric Technician Assistant, such as assisting a colleague or inmate involved in a physical altercation. Respondent did not call any physicians or other medical professionals to testify, but did submit one worker’s compensation evaluation. The ALJ found the workers’ compensation evaluation did not provide any analysis or conclusion regarding the sole issue in this matter, which is whether Respondent is disabled or substantially incapacitated from performing the duties of a Psychiatric Technician Assistant. The ALJ also ruled that the report constitutes administrative hearsay, so could only be considered to the extent that it supplements or explains other evidence.

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 to present competent medical evidence to show that, as of the date she applied, she was substantially unable to perform the usual duties of her position due to orthopedic conditions. She did not offer sufficient objective medical evidence to meet her burden. Without such evidence, Respondent failed to establish that she qualifies for disability and her application must be denied.

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

ELIZABETH YELLAND
Senior Attorney