ATTACHMENT B

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

John J. Hurley, Jr. (Respondent) applied for industrial disability retirement based on an orthopedic (lower back) condition and a shattered shoulder. By virtue of his employment as a Fire Captain for Respondent California Department of Corrections and Rehabilitation, California Medical Facility (Respondent CDCR), Respondent was a safety member of CalPERS.

Respondent filed an application for service pending industrial disability retirement on September 15, 2016, and has been receiving benefits since that time.

As part of CalPERS’ review of Respondent’s medical condition, Dr. Daniel D’Amico, a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. D’Amico interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. D’Amico opined that Respondent experienced some discomfort but was not substantially disabled from the performance of his job duties.

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 reports, 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 (OAH). A hearing was held on June 20, 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. D’Amico testified in a manner consistent with his examination of Respondent and the IME report. Dr. D’Amico’s medical opinion is that Respondent has no gross weakness or tenderness, but does have some pain. Dr. D’Amico found that while he had some degenerative disc disease, that is a common circumstance, and does not disable him from performing his job duties, which he admitted he could
perform and did continue to perform long after his truck accident. Therefore, Respondent is not substantially incapacitated.

Respondent testified on his own behalf that he had substantial injuries in his truck accident and had physical therapy and other rehabilitation. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from his workers’ compensation physicians to support his appeal. He is no longer receiving treatment.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that the IME testimony was persuasive that Respondent had some injuries that did not cause him ongoing limitations other than discomfort and were not substantially disabling from performance of his job duties.

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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