ATTACHMENT B

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

Respondent California Highway Patrol (Respondent CHP) applied for industrial disability retirement for Robert J. Murphy (Respondent) based on internal (digestive impairment) and cardiologic (circulatory, heart impairment, arrhythmia) conditions. By virtue of his employment as an Officer for Respondent CHP, Respondent was a state safety member of CalPERS.

As part of CalPERS’ review of Respondent’s medical condition, Robert B. Weber, M.D., performed an Independent Medical Examination (IME). Dr. Weber is a board-certified Internist, and he is also a fellow with the American College of Cardiology. Dr. Weber interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Weber opined that Respondent was not substantially incapacitated from performing his usual and customary 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 CHP appealed this determination and exercised their right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on June 14, 2018. Respondent represented himself at the hearing, and Respondent CHP appeared at the hearing through its counsel.

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. Weber testified in a manner consistent with his examination of Respondent and the IME report. Dr. Weber explained that Respondent may have Gastroesophageal Reflux Disease (GERD). Dr. Weber explained, though, that GERD is common and not substantially incapacitating.

The medical records for Respondent’s cardiological condition were unremarkable. Respondent’s echocardiogram from 2014 was normal, as were most of the other
medical reports related to Respondent’s heart. The only deviation from “perfectly normal” that Dr. Weber saw was one report of “benign isolated abnormal heartbeats”, also called atrial contractions. Dr. Weber explained that Respondent’s GERD, and regular coffee intake, can cause premature atrial contractions.

Dr. Weber’s examination of Respondent was normal. Respondent’s heart, blood pressure, respirations, and height and weight were normal. Respondent’s oxygen saturation and cardiac examination were normal. Although Respondent complained of slight tenderness on palpation of certain areas of his chest, Dr. Weber explained that the tenderness was insignificant from a cardiologic standpoint, and was a pertinent negative for cardiac problems.

Dr. Weber ultimately diagnosed Respondent with: a history of anxiety related palpitations; a history of premature atrial contractions; normal coronary arteries; chest wall tenderness; history of GERD, controlled by medication; and sleep disturbance, with sleep apnea ruled out.

Dr. Weber concluded, that Respondent is able to perform the critical tasks required of a CHP Officer. Dr. Weber concluded that Respondent is not substantially incapacitated from performing his usual and customary job duties.

Respondent testified on his own behalf that he has only had two on duty incidents requiring him to seek medical treatment (2006 and 2010). In 2010, Respondent began experiencing incidents where he would be speaking with his family and suddenly found himself on the ground. Respondent did not call any physicians or other medical professionals to testify.

A CHP Sergeant with 16 years’ experience testified that he witnessed Respondent experience health problems while Respondent was on duty. The Sergeant felt that Respondent’s condition could be an officer safety, or a public safety, issue.

Respondent CHP introduced multiple medical records and various personnel records into evidence. Since none of the medical professionals who authored the medical records testified in support of the medical records, they were admitted into evidence as administrative hearsay under Government Code section 11513(d).

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 medical records provided supported Dr. Weber’s conclusion that Respondent is able to perform his usual and customary job duties. Hence, the preponderance of the evidence did not establish that Respondent is substantially incapacitated from performing his usual and customary 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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