ATTACHMENT B

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

Geraldjan B. Gerolaga (Respondent) applied for industrial disability retirement based on orthopedic (lower back, lower extremities and shoulders) conditions. By virtue of his employment as a Psychiatric Technician for Respondent Department of State Hospitals Napa (Respondent DSH), Respondent was a state safety member of CalPERS.

As part of CalPERS’ review of Respondent’s medical condition, Howard Sturtz, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Sturtz interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints and reviewed his medical records. Dr. Sturtz opined that Respondent is capable of performing all of his usual job duties without any limitations.

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 March 1 and June 15, 2018. Respondent represented himself at the hearing. Respondent DSH 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. Sturtz testified in a manner consistent with his examination of Respondent and the IME report. Dr. Sturtz’s medical opinion is that Respondent did not have any objective physical findings. Respondent’s complaints of low back pain were not supported by any objective physical findings or diagnostic abnormalities. Rather, Dr. Strutz noted that Respondent’s performance during the physical exam was unnatural, and Respondent reacted to maneuvers that should not have been painful. Furthermore, Dr. Strutz pointed out that although Respondent complained of back pain, Respondent was observed on surveillance films moving, jumping, running and clicking his heels without any limping or avoidance of pain. Therefore, Respondent is not substantially incapacitated.
Respondent testified on his own behalf that he is not capable of performing his usual job duties due to severe pain. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from his treating physicians to support his 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 Respondent failed to “establish by competent medical opinion that he is incapacitated from the performance of his duty as a psychiatric technician.”

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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PREET KAUR
Senior Attorney