ATTACHMENT B

STAFF’S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Chau V. Nguyen (Respondent) applied for disability retirement based on an orthopedic (right wrist) condition. By virtue of his employment as a Psychiatric Technician for Respondent Department of Developmental Services, Fairview State Hospital (Respondent DDS), Respondent was a state miscellaneous member of CalPERS.

Respondent retired for service effective January 31, 2017 and has been receiving benefits since that time. On March 8, 2017, Respondent submitted an application for disability retirement on the basis of a claimed orthopedic (right wrist) condition.

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

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 October 1, 2018. Respondent represented himself at the hearing. Respondent DDS did not appear at the hearing. The ALJ found that CalPERS had provided Respondent DDS with sufficient and proper notice of the date, time, and location of the hearing and that the matter could proceed as a default against Respondent DDS.

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. Suzuki testified in a manner consistent with his examination of Respondent and the IME report. Dr. Suzuki noted that Respondent had fractured his right wrist in 2014. Dr. Suzuki also found that Respondent did have some diminished range of motion in his right wrist, but described or characterized this as being only “slightly decreased.” Dr. Suzuki’s medical opinion is that Respondent can perform the usual and customary duties of the Psychiatric Technician position. Dr. Suzuki offered his opinion that Respondent is not substantially incapacitated.

Respondent testified on his own behalf. He described returning to work in 2016, without any restrictions or limitations. After working full duty for approximately 3 months, Respondent, then 63 years old, decided that he could no longer do the work as he had previously performed in the position. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted one medical report from one physician with whom he had been treated for an unrelated (non-orthopedic) condition. The ALJ considered the contents of the report, noting that the doctor included in his report Respondent’s subjective complaints of intermittent pain in his right hand. The report did not address the CalPERS standard of objective, competent medical evidence demonstrating any substantial incapacity to perform Respondent’s usual and customary job duties on a permanent or uncertain basis.

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 failed to meet his burden of demonstrating, on the basis of competent medical evidence, that he was permanently incapacitated from performing the usual and customary duties of a Psychiatric Technician for Respondent DDS.

The ALJ concluded that Respondent is not eligible for disability retirement.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to “make technical or other minor changes in the Proposed Decision.” In order to avoid confusion or ambiguity, staff recommends that the Proposed Decision be modified to correctly reflect that Respondent was a “state” miscellaneous member of CalPERS, not a “local” miscellaneous member of CalPERS. (See page two, Factual Finding No. 2, second sentence, and page five, Order.)

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board, as modified.

RORY J. COFFEY
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