ATTACHMENT B

STAFF’S ARGUMENT
STAFF’S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Respondent Derrick L. McGaskey (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge’s (ALJ) Proposed Decision dated October 3, 2018. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

Respondent applied for disability retirement based on orthopedic (back, shoulder, hip) and cardiologic (heart) conditions. Respondent was a state member of CalPERS who applied for disability retirement on May 30, 2017.

James M. Schmidtz, M.D., a board-certified Cardiologist, and Harry A. Khasigian, M.D., a board-certified Orthopedic Surgeon, performed Independent Medical Examinations (IME). Dr. Schmidtz and Dr. Khasigian interviewed and examined Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Schmidtz and Dr. Khasigian both opined that Respondent is not substantially incapacitated from his job duties by his cardiologic or orthopedic conditions, respectively.

Dr. Khasigian testified that his medical opinion is that Respondent has no neurological deficits, normal reflexes, no muscle atrophy and is capable of all movement necessary to perform his job. Therefore, Respondent is not substantially incapacitated due to an orthopedic condition.

Dr. Schmidtz testified that his medical opinion is that Respondent’s cardiac condition would not be aggravated or exacerbated by performing his work duties and the fact that he had prior coronary intervention alone does not prevent him from working. Moreover, Dr. Schmidtz found that Respondent has had an excellent angiographic result, and the stent placement is successful. Tests done at the time of his hospital visit showed clearly that he did not have a heart attack (myocardial infarction). He and other cardiologists who examined Respondent felt his current symptoms are not angina (chest pain caused by a heart condition). His chest pain is caused by non-heart related discomfort. Respondent’s cardiovascular condition does not present any need for restrictions at his job. Therefore, Respondent is not substantially incapacitated.

Respondent testified on his own behalf that he has pain in his torso and legs and he experiences angina. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted brief medical records, but no reports, from his treating physicians to support his appeal. However, the records did not substantiate that the doctors who said he was disabled either understood or reviewed his job duties, specified any job duties he could not perform, or found he had a permanent or long term disability. As a matter of fact, each of Respondent’s doctors waffled between findings of permanent and short-term disability, except Dr. Brudz, who consistently found he was not permanently disabled.
Respondent argued that he is entitled to disability retirement because he was off work prior to applying for disability retirement due to surgeries and temporary medical restrictions from which he has recovered. This is not the standard for CalPERS disability findings. 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 for a permanent or indefinite period of time. The evidence Respondent introduced at the hearing was insufficient to show substantially incapacity from his sedentary job, and was not persuasive that Respondent was substantially incapacitated from performing his job duties.

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 did not produce evidence that he was incapacitated from his job duties. The ALJ also found that Dr. Khasigian and Dr. Schmidtz were persuasive in their findings that Respondent is capable of performing the usual duties of his job.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the November 15, 2018, meeting was well reasoned and based on the credible evidence presented at hearing.

December 19, 2018

CYNTHIA RODRIGUEZ
Senior Attorney