ATTACHMENT B

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

David Luther (Respondent) applied for industrial disability retirement on January 31, 2018, based on orthopedic conditions (right hip, right toes, neck and lower back). By virtue of his employment as a Correctional Officer for Respondent Ironwood State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

As part of CalPERS’ review of Respondent’s medical condition, James Fait, M.D., a board-certified Orthopedic Surgeon performed an Independent Medical Examination (IME). Dr. Fait interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Fait opined that Respondent is not substantially incapacitated to perform his usual job duties as a Correctional Officer for Respondent CDCR.

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 duration which is expected to last at least 12 consecutive months or will result in death.

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 January 22, 2019. Neither Respondent Luther nor Respondent CDCR appeared 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.

No witnesses testified for CalPERS at the hearing. However, Dr. Fait’s IME Report was admitted as evidence regarding Respondent Luther’s claimed orthopedic condition.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that Respondent Luther had the burden of proof to establish CalPERS’ determination that he is not eligible for industrial disability retirement is incorrect, and that he is substantially incapacitated from performance of his duties as a Correctional Officer. Despite being properly served with
the date, time and location of hearing, Respondent Luther made no appearance. Start time for the hearing was postponed for 30 minutes to give Respondent Luther additional time to appear, which he did not. The ALJ found that Respondent Luther provided no evidence and did not meet his burden to show that he was substantially incapacitated from the performance of his job duties. The ALJ concluded that Respondent is not eligible for industrial disability retirement. CalPERS’ determination was affirmed.

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

April 17, 2019

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