ATTACHMENT B

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

Tina M. Martinez (Respondent) applied for disability retirement based on deafness and cerebral palsy. By virtue of her employment as a Program Technician II for Respondent California Department of Veterans Affairs (Respondent CalVet), Respondent was a state miscellaneous member of CalPERS.

Respondent filed an application for service pending disability/industrial disability retirement on May 4, 2016 and has been receiving benefits since that time.

As part of CalPERS’ review of Respondent’s medical condition, Michael M. Bronshvag, M.D., who is board-certified in Internal Medicine and Neurology, performed an Independent Medical Examination (IME). Dr. Bronshvag interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Bronshvag opined that Respondent’s condition has remained the same since she first started working as a Program Technician and she is capable of performing her 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 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 her position.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on April 25, 2018, August 17, 2018, and February 6, 2019. Respondent was represented by counsel at the hearing. Respondent CalVet did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet.

At the hearing, Dr. Bronshvag testified that Respondent is unable to perform the job duties and she is restricted from walking one or two hours occasionally and limited to lifting no more than five pounds up to three hours per day. Dr. Bronshvag also noted that Respondent’s condition had deteriorated since December 2017.
Respondent testified on her own behalf that her job duties changed when her new supervisor began to manage her work. Respondent also called Dr. Maria Beltran, M.D., to testify on her behalf. Respondent submitted medical records from her treating physicians to support her appeal. Dr. Beltran testified that Respondent had limitations, which would prevent her from performing her usual job duties.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent’s appeal. The ALJ found that based on the testimony of the medical experts, Respondent presented competent medical evidence demonstrating she is incapable of performing her job duties.

The ALJ concluded that Respondent is eligible for disability retirement.

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

April 17, 2019

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PREET KAUR
Senior Attorney