ATTACHMENT B

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

Michael T. Hendrix (Respondent) applied for disability retirement based on an orthopedic (low back) condition. By virtue of his employment as a Custodian for Respondent California Highway Patrol (Respondent CHP), Respondent was a state member of CalPERS.

Respondent filed an application for disability retirement on 8/25/2017. As part of CalPERS’ review of Respondent’s medical condition, Harry A. Khasigian, M.D., a board-certified orthopedic surgeon, performed an Independent Medical Examination (IME). Dr. Khasigian interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Khasigian opined that Respondent was not incapacitated for performance of his substantial 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 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 February 6, 2019. Respondent represented himself at the hearing. Respondent CHP 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. Khasigian testified in a manner consistent with his examination of Respondent and the IME report. Dr. Khasigian’s expert medical opinion is that Respondent is not incapacitated from his work, and that his reports of pain are inconsistent with and not related to any clinical findings upon exam or and upon review of other exams. Although Dr. Khasigian did a full physical examination he could find no cause for the level of discomfort Respondent described, and there were no medical findings that would preclude Respondent from performing his specific job duties.
Pursuant to Dr. Khasigian’s expert opinion, Respondent can stand, walk, lift and perform the rotational and other activities required by his profession. Dr. Khasigian noted that Respondent had “significant range of motion, particularly for his body type,” and that there was “insufficient diagnostic evidence and objective documentation to correlate with his subjective complaints.” Therefore, Dr. Khasigian determined that Respondent is not substantially incapacitated.

Respondent testified on his own behalf that he was unable to perform his duties without significant pain unless he takes his medication. Respondent was clear that with medication he can perform his job duties. Respondent did not submit any medical records or testimony to support his claim that he is incapacitated from his substantial job duties, as is required to sustain 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 did not offer sufficient medical evidence to support his disability retirement application. He had no medical records, although he testified that he had pain when he worked without medication. But, as the Administrative Law Judge determined, Respondent “can perform all of his job duties while taking pain medication and muscle relaxers,” and that “[d]iscomfort when performing one’s job duties does not constitute an inability to perform those duties.” The ALJ determined that Respondent is incapacitated from performing his substantial job duties.

The ALJ concluded that Respondent is not 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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