ATTACHMENT B

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

Santosh Kumari (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge’s (ALJ) Proposed Decision on Remand dated January 4, 2019. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

In December 2013, Respondent submitted an application for service pending industrial disability retirement. Respondent claimed disability on the basis of podiatric (left foot) and psychiatric (depression) conditions. By virtue of her employment as a Psychiatric Technician Assistant (PTA) for Respondent Department of State Hospitals Napa (Respondent DSH), Respondent was a state safety member of CalPERS. Respondent service retired effective November 15, 2013, and has been receiving a service retirement allowance since that date.

This matter goes back to 2013. There have been multiple examinations of Respondent, multiple medical reports written, reviewed and considered by CalPERS staff, medical experts, ALJs and the Board. The determinations, findings and conclusions have been consistent; Respondent was not, at the time she submitted her application for disability retirement, substantially incapacitated from performing her usual and customary duties.

The initial hearing was held on December 12, 2016, with a second day of hearing taking place on May 31, 2017. Respondent was represented by counsel at these two days of initial hearing. Medical experts were called and testified on Respondent’s behalf as part of the initial hearing. The ALJ issued a Proposed Decision – denying the appeal - on August 7, 2017. At its September, 2017 meeting, the Board decided to remand the matter back to the ALJ for the specific purpose of allowing Respondent to present additional evidence.

The Hearing on Remand took place on December 7, 2018. As noted by the ALJ in Factual Finding No. 67 – part of the ALJ’s 19 page Proposed Decision on Remand – “respondent offered no other competent medical evidence….”

The Proposed Decision on Remand – which again denied Respondent’s appeal – was considered by the Board on February 21, 2019. The Board adopted the Proposed Decision on Remand as its own Decision.

No new evidence has been presented by Respondent in her Petition for Reconsideration that would alter the analysis of the ALJ. The Proposed Decision On Remand that was adopted by the Board at the February 21, 2019, meeting was well reasoned and based on the credible evidence presented at hearing.

In her Petition for Reconsideration, Respondent admits, in relevant part, in a telling and conclusive manner, that she is “not sure what more evidence I can provide….”
Staff argues that the Board deny the Petition for Reconsideration and uphold its Decision.

April 17, 2019

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RORY J. COFFEY
Senior Attorney