ATTACHMENT B

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

Kristin A. Youngblood (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge’s (ALJ) Proposed Decision dated January 11, 2019. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

Respondent Kristin A. Youngblood (Respondent) was employed by Respondent Valley State Prison for Women, California Department of Corrections and Rehabilitation (Respondent CDCR) as a Correctional Officer. On February 13, 2013, Respondent applied for industrial disability retirement (IDR) on the basis of an orthopedic (back) condition and was approved by CalPERS. She was granted an IDR effective February 2013.

In October 2017, CalPERS staff notified Respondent that she would be reevaluated for purposes of determining whether she remains substantially incapacitated and is entitled to continue to receive an IDR. In order to remain eligible for disability retirement, competent medical evidence must demonstrate that the individual remains substantially incapacitated from performing the usual and customary duties of her former position. The injury or condition which is the basis for the disability must be permanent or of an extended duration which is expected to last at least 12 consecutive months or will result in death.

Respondent had an Independent Medical Examination (IME) by Harry A. Khasigian, M.D., a board-certified Orthopedic Surgeon. The doctor interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed medical records and performed a comprehensive IME. Dr. Khasigian opined that Respondent is substantially capable of performing the duties of her position as a Correctional Officer. After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was no longer substantially incapacitated, was no longer eligible for industrial disability retirement, and should therefore be reinstated to her former position as a Correctional Officer.

Respondent appealed this determination and exercised her right to a hearing on November 28, 2018. Respondent represented herself at the hearing. Respondent CDCR 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.

At the hearing, Dr. Khasigian testified that Respondent’s lumbar range of motion was normal, as was her thoracic spine and cervical spine range of motion and shoulders. Her lower extremities and gait were normal, and her EMG findings were normal. Her physical exam was normal, supporting Dr. Khasigian’s review of the MRI as showing
only normal degenerative disk disease, not the prior doctor and the chiropractors’ exaggerated readings of the MRI interpreting as “bulging disks.”

Respondent testified on her own behalf. Respondent testified that she experienced pain and discomfort and needs treatment. Respondent also called as a witness Perry Carpenter, D.C., a chiropractor who examined her in order to perform an IME on Respondent’s behalf. Respondent submitted medical records from Dr. Carpenter to support her appeal.

Dr. Carpenter testified that Respondent could not work overtime, had limitations due to pain, and could not perform her essential duties. He determined that she was severely disabled, although she has a normal lumbar spine and no radiculopathy[1], in agreement with Dr. Khasigian. Dr. Carpenter testified that Respondent was permanently incapacitated from her job duties.

The ALJ found that the medical evidence presented by Dr. Khasigian established that Respondent is no longer substantially incapacitated from performing her duties as a Correctional Officer for Respondent CDCR. The ALJ found Dr. Khasigian’s reports were persuasive in finding that Respondent was not incapacitated because, as Dr. Khasigian testified and Dr. Carpenter agreed, her back condition was not adequately established by objective medical evidence. Dr. Khasigian’s examination and review of her condition was balanced and credible. Conversely, the medical testimony of Dr. Carpenter was given less weight as he is not a physician, and Dr. Carpenter admitted that he had supplied significant input into Respondent’s answers to questions about her ability to perform her job duties, informing her how she should answer. The ALJ also found that Dr. Carpenter was “not consistent with the standards applicable in these types of disability retirement proceedings.” In discussing respondent’s ability to perform various work duties:

“Dr. Carpenter stated he had “a lot of input” into respondent’s answers, discussing details, examples, and other information. Many of the corresponding comments were speculative regarding what may happen, which makes the limitations Dr. Carpenter notes more prophylactic, and less focused on whether respondent could actually perform a particular job duty if so required.” (Proposed Decision paragraph 37).

Dr. Carpenter’s criticisms of Dr. Khasigian’s evaluation were also suspect due to Dr. Carpenter’s over-analysis and exaggeration of her limitations. Dr. Carpenter also failed to provide the testing results he had garnered, which led to Dr. Carpenter’s credibility being “diminished.”

After considering all of the evidence introduced as well as arguments by the parties at the hearing, the ALJ denied Respondent’s appeal. The ALJ found that CalPERS evidence that Respondent is capable of performing her duties is competent and reliable and that Respondent failed to rebut that evidence with her medical expert.

Respondent requests reconsideration due to her concern that Dr. Khasigian’s report is not thorough enough. Dr. Khasigian examined all the conditions upon which Respondent claimed disability. Dr. Khasigian, as the ALJ noted, delivered a credible and persuasive report and testimony, and is a board-certified Orthopedic Surgeon. The hearing in October 2018 reasonably considered her condition, expert medical evaluation and the substantial requirements of her position. Prophylactic concerns about future flare-ups and possible worsening condition are not the standard for granting IDR.

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 January 11, 2019, meeting was well reasoned and based on the credible evidence presented at hearing.

April 17, 2019

CYNTHIA RODRIGUEZ
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