ATTACHMENT B

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

Richard M. Gomula (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge’s (ALJ) Proposed Decision dated November 21, 2018. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

Respondent applied for disability retirement on July 11, 2016, based on orthopedic (neck, back, shoulder, elbows and knees) conditions. By virtue of his employment as a Painter I for Respondent California State University, Northridge (Respondent CSU), Respondent is a state miscellaneous member of CalPERS.

As part of CalPERS’ review of Respondent’s medical condition, John D. Kaufman, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME) of Respondent. Dr. Kaufman interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Kaufman opined that Respondent was not substantially incapacitated from performing his job duties.

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. A hearing was held on October 23, 2018. Respondent represented himself at the hearing. Respondent CSU 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. Kaufman testified in a manner consistent with his examination of Respondent and the IME report. Dr. Kaufman testified that Respondent’s physical examination was “entirely normal.” Dr. Kaufman testified that there was no objective evidence of any impairment or physical problems related to Respondent’s neck, back, shoulders, elbows, or knees. Dr. Kaufman found no spasm in Respondent’s cervical or lumbar spine and observed good muscle strength, symmetric reflexes, no atrophy and no sensory deficit in Respondent’s upper extremities. Dr. Kaufman’s medical opinion is that Respondent was able to do all the job duties of his occupation.
Respondent testified on his own behalf. Respondent testified regarding his job duties, his injury at work, and the limitations caused by his orthopedic conditions. Respondent did not call any medical professionals to testify. Respondent submitted medical records from his treating physicians to support his appeal.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ found that the competent medical evidence presented at the hearing showed that Respondent was not permanently disabled or substantially incapacitated because of his orthopedic (neck, shoulders, right elbow, back or knees) conditions at the time he submitted his application for disability retirement. The ALJ further found that the medical records provided by Respondent did not establish that he was permanently disabled or substantially incapacitated at the time he filed his application for disability retirement.

The ALJ concluded that Respondent is not eligible for disability retirement and, therefore, affirmed CalPERS’ decision and denied his appeal.

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 February 21, 2019 meeting was well reasoned and based on the credible evidence presented at hearing.

For all the above reasons, staff argues that the Petition for Reconsideration be denied.

April 17, 2019

AUSTA WAKILY
Senior Attorney