ATTACHMENT B

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

Lori D. Brandt (Respondent) applied for disability retirement based on a neurological (Myasthenia Gravis) condition. By virtue of her employment as an Office Technician for Respondent California Department of Parks and Recreation (Respondent DPR), Respondent was a state miscellaneous member of CalPERS.

Respondent filed an application for service pending disability retirement on May 1, 2018 and has been receiving benefits since that time.

As part of CalPERS’ review of Respondent’s medical condition, Michael M. Bronshvag, M.D., a board-certified Internist and Neurologist, 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, while having the condition of Myasthenia Gravis, is not disabled from her job duties as an Office Technician. Dr. Bronshvag found her capable of performing sedentary office work, and therefore could perform 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 report, 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. A hearing was held on March 25, 2019. Respondent represented herself at the hearing. Respondent DPR 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. CalPERS answered Respondent’s questions and clarified how to obtain further information on the process.

At the hearing, Dr. Bronshvag testified in a manner consistent with his examination of Respondent and the IME report. Dr. Bronshvag’s medical opinion is that the condition of Myasthenia Gravis did not cause an incapacity to perform all job duties. In this case,
Dr. Bronshvag observed no myasthenic or myopathic abnormalities and had no physical examination findings to preclude performing her specific job duties. Dr. Bronshvag performed an electrodiagnostic test that showed she had no muscle weakness currently that would prohibit her specific job duties. Her “levels of difficulty do not match up with his physical examination findings” (Proposed Decision, page 6). Dr. Bronshvag determined that Respondent should have a period of up to six months of medical time off to recover from a surgical procedure, but that was expansive, and she should be returned to work after six months (Proposed Decision, page 7). Therefore, Respondent is not substantially incapacitated from performance of her job duties.

Respondent testified on her own behalf that her condition, Myasthenia Gravis, caused her to feel tired, sleepy, muscle weakness, and the medication for the conditions cause severe gastric discomfort that created an intolerable condition in the workplace. She believes that stress, including work stress, can cause a worsening of her condition and possibly limit her life and her level of functioning. Respondent also called her husband to testify about her weakness and discomfort, on her behalf. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from her treating physicians to support her appeal. None of those medical records found her to be permanently incapacitated from her job duties.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that none of the medical documents, from CalPERS or Respondent, determined that Respondent was permanently incapacitated from the performance of her duties. Upon review of her job duties and her medical records, and the testimony of the Independent Medical Examiner, there was nothing to establish that she was incapacitated from her 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.

June 19, 2019

CYNTHIA RODRIGUEZ
Senior Attorney