ATTACHMENT B

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

Thomas J. Dewitt (Respondent) applied for disability retirement based on orthopedic (neck and left shoulder) conditions. By virtue of his employment as a Transportation Engineering Technician for Respondent California Department of Transportation - District 02 (Respondent CalTRANS), Respondent was a state miscellaneous member of CalPERS.

Respondent filed an application for service pending disability retirement on March 4, 2016 and has been receiving benefits since that time.

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 substantially incapacitated for the performance of his 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 requested a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on May 8, 2019. Neither Respondent nor Respondent CalTRANS appeared 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 medical opinion is that while Respondent had arthritis, he was not disabled. Dr. Khasigian testified that based on the physical examination, Respondent did not have any limitations in his lumbar or thoracic
spine. Respondent’s range of motion was limited for the cervical spine due to arthritis, but the limitation was minor. Therefore, Respondent is not substantially incapacitated.

After considering all of the evidence introduced by CalPERS, the ALJ denied Respondent’s appeal. The ALJ found the testimony of Dr. Khasigian to be credible and held that Dr. Khasigian’s report and testimony established that respondent was not disabled. The ALJ also found that based on the applicable law, “[t]he burden was on respondent to offer sufficient competent medical evidence at hearing to support his disability retirement application. Respondent failed to do so.” Respondent failed to present any evidence demonstrating he is substantially incapacitated for the performance of his job duties. For these reasons, the ALJ held that his disability retirement application must be denied.

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

PREET KAUR
Senior Attorney