ATTACHMENT B

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

Kim J. Baldi (Respondent) applied for industrial disability retirement based on a cardiologic (heart) condition and hypertension. By virtue of his employment as a California Highway Patrol Officer for Respondent California Highway Patrol (Respondent CHP), Respondent was a state safety member of CalPERS.

After Respondent service retired on December 13, 2015, and began receiving retirement benefits, he filed an application for industrial disability retirement on June 13, 2018. CalPERS determined he was entitled to file a late industrial disability application due to reasonable mistake per Government Code Section 20160.

As part of CalPERS’ review of Respondent’s medical condition, Thomas E. Leonard, M.D., board-certified in Internal Medicine, Cardiology and Pulmonology, performed an Independent Medical Examination (IME). Dr. Leonard interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Leonard reported that Respondent had a cardiac incident, and subsequently underwent a successful heart procedure installing stents in his blocked arteries. Dr. Leonard opined that despite the event and procedure, Respondent is in good physical condition, exercises regularly, and is capable of performing 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. A hearing was held on April 15, 2019. Neither Respondent nor Respondent CHP appeared at the hearing. Therefore, the matter proceeded as a default for no appearance as to both Respondents.

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. Leonard testified in a manner consistent with his examination of Respondent and the IME report. Dr. Leonard's medical opinion is that Respondent did not have a continuing medical condition which interfered with his capacity to perform the substantial duties of his job. Dr. Leonard addressed the 14 critical tasks of the CHP Officer, and noted that Respondent could perform each task, despite the medical treatment he had received for his cardiac issue. Dr. Leonard found that Respondent had “excellent ventricular function” and “excellent physical tolerance.” Therefore, Respondent is not substantially incapacitated.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that there was no evidence presented to support the claim of disability. In addition, the testimony of Dr. Leonard was persuasive as to Respondent’s capacity to perform his job duties. The ALJ found it apparent that "Respondent underwent successful surgery and was not suffering from any symptoms or limitation that preclude him from performing his duties as a CHP officer."

The ALJ concluded that Respondent is not eligible for industrial 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