ATTACHMENT B

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

Debra L. Daniel (Respondent) worked as a Community Liaison for Respondent City of San Bernardino (Respondent City). By virtue of her employment, Respondent was a local miscellaneous member of CalPERS.

On January 15, 2016, Respondent filed an application for disability retirement based on psychological (anxiety and depression) conditions.

As part of CalPERS’ review of Respondent’s medical condition, Lawrence H. Warick M.D., Ph.D., a board-certified Psychiatrist, performed an Independent Medical Examination (IME). Dr. Warick interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Warick opined that Respondent is not substantially incapacitated from performing her job duties as a Community Liaison.

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 April 9, 2019. Both Respondents 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. Warick testified in a manner consistent with his examination. Dr. Warick performed a psychiatric examination of Respondent for two hours, which included an interview and psychological testing. Dr. Warick testified that he performed the Milan Clinical Multiaxial test, fourth edition (MCMI-IV), which assessed Respondent’s clinical diagnosis and underlying personality. Dr. Warick testified and summarized in his report that the results indicated that Respondent showed features of depression and anxiety, but those were not specific, and she showed a mixed
personality disorder. Dr. Warick also performed the Structured Inventory of Malingered Symptomatology (SIMS) test to rule out malingering, meaning to make up or create symptoms. Dr. Warick testified that the results of the SIMS test showed that Respondent had significant exaggeration of her symptoms, but not outright malingering. Dr. Warick testified that her exaggeration of her symptoms was consistent with her medical history and dramatic presentation of her history and problems during the interview.

Dr. Warick further testified that despite her numerous claims of disability based on alleged psychiatric conditions, Respondent has worked for 10 years in other jobs after leaving her position with Respondent City in 2001. Dr. Warick noted that Respondent could not account for the fact that she was able to hold two different jobs of a similar clerical nature, as her job with Respondent City despite her claimed disability.

Dr. Warick reviewed Respondent's medical records and notes. He noted that medical records from Dr. William Soltz from February 11, 2001 indicated that Respondent was having performance problems at work, but also significant family related stress, including the death of her father in 2001. Additionally, Dr. Warick's review of medical records from Dr. Joel Frank from September 13, 2002, showed that after Dr. Frank's examination and review of Respondent, he concluded that she had no evidence of a mental disorder, but rather was "under the gun" at work because she was not performing her duties satisfactorily, and concluded that "this is an administrative issue and not a psychiatric issue."

Dr. Warick testified that after consideration of his psychiatric examination findings, his review of medical records and diagnostic tests, as well as his review of the requirements of the position of Community Liaison, there were no duties of a Community Liaison that Respondent would be unable to perform. Dr. Warick explained that even though Respondent may have some psychiatric issues such as depression, her depression does not rise to the level of causing a substantial incapacity to perform her job duties as a Community Liaison, particularly in light of the fact she has performed two jobs with similar clerical responsibilities for 10 years after leaving her employment with Respondent City.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ upheld CalPERS' determination and denied Respondent’s appeal. The ALJ found that Respondent failed to meet her burden to prove that she is substantially incapacitated to perform her usual job duties, and she failed to prove that she is eligible for a disability retirement. This conclusion is based upon Respondent’s failure to produce any evidence, and Dr. Warick’s opinion after performing an independent medical examination of Respondent and reviewing medical records provided to him. Dr. Warick's testimony was credible and forthright, and constituted the only competent medical evidence presented in this case. 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

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