ATTACHMENT B

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

Michael T. Hendrix (Respondent), an employee at the California Highway Patrol (Respondent CHP), petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge’s (ALJ) Proposed Decision dated March 8, 2019, which denied Respondent’s appeal of CalPERS’ decision not to grant disability retirement. For reasons discussed below, staff argues the Board deny the Petition for Reconsideration and uphold its decision.

Respondent filed an application for disability retirement on August 25, 2017. 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 either permanently or for an extended duration of at least twelve 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 exercised his right to a hearing before an ALJ with the Office of Administrative Hearings. Respondent was notified of the requirement that he provide qualified medical evidence of his capacity to perform his job duties.

A hearing was held on February 6, 2019. Respondent represented himself and testified about his medical condition at the hearing. Respondent CHP did not appear at the hearing. After the hearing, the ALJ found that there was no qualified medical evidence supporting Respondent’s claim of disability and issued a Proposed Decision denying the application for disability retirement. The Board adopted that proposed decision.

Respondent has filed a Petition for Reconsideration, but there is no change of circumstance that would call for a reconsideration of the situation that has previously been determined. The medical conditions he described in his Petition for Reconsideration were described in his testimony, but no qualified medical examiner was present or stated in any medical records that those were the member’s medical conditions or that those conditions would permanently or for more than 12 months prevent Respondent from substantially performing his job duties.

The Independent Medical examiner, Dr. Harry A. Khasigian, testified that in his expert medical opinion is that Respondent is not incapacitated from his work. Although Dr. Khasigian did a full physical examination he could find no cause for the level of discomfort Respondent described, and there were no medical findings that would preclude Respondent from performing his specific job duties. Dr. Khasigian noted that
Respondent had “significant range of motion, particularly for his body type,” and that there was “insufficient diagnostic evidence and objective documentation to correlate with his subjective complaints.” Therefore, Dr. Khasigian determined that Respondent is not substantially incapacitated.

Respondent testified on his own behalf that he was unable to perform his duties without significant pain unless he takes his medication. Respondent was clear that with medication he can perform his job duties. Respondent did not submit any medical records or testimony to support his claim that he is incapacitated from his substantial job duties, as is required to sustain his appeal.

The ALJ found that Respondent did not offer medical evidence to support his disability retirement application. He had no medical records, although he testified that he had pain when he worked without medication. But, as the ALJ determined, Respondent “can perform all of his job duties while taking pain medication and muscle relaxers,” and that “[d]iscomfort when performing one’s job duties does not constitute an inability to perform those duties.” The ALJ determined that Respondent is not incapacitated from performing his substantial job duties. The Petition for Reconsideration presents no new claims as to his medical conditions and ability to perform his job duties. The claims in the Petition for Reconsideration were presented at hearing through the testimony of Respondent and the report of the Independent Medical Examiner, who was aware of the Respondent’s claims and reported as to the actual medical conditions.

No new evidence has been presented by Respondent nor Respondent CHP that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the April 17, 2019, meeting was well reasoned and based on the credible evidence presented at hearing.

For all of the foregoing reasons the Board should deny the Petition for Reconsideration and the Proposed Decision should be adopted.

June 19, 2019

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