ATTACHMENT B

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

Ryan T. Massa (Respondent) applied for industrial disability retirement based on orthopedic (neck and lower back) conditions. By virtue of his employment as a Correctional Officer for Respondent California Rehabilitation Center, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

As part of CalPERS’ review of Respondent’s medical condition, James M. Fait, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Fait interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Fait opined that Respondent was not substantially incapacitated from performing his usual and customary job duties as a Correctional Officer.

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 exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on June 10, 2019. Respondent was represented by counsel at the hearing. Respondent CDCR did not appear at the hearing.

At the hearing, Dr. Fait testified in a manner consistent with his examination of Respondent and the IME report. On physical examination, Dr. Fait noted that Respondent’s gait was slow and exceptionally rigid, but was able to stand on his heels and toes.

Upon examination of the cervical spine, Dr. Fait found that Respondent exhibited a limited range of motion, with tenderness along the back of Respondent’s neck. Respondent complained of mild tenderness in his trapezius, but Dr. Fait did not find evidence of spasm in the neck. The remainder of Respondent’s cervical spine examination by Dr. Fait was essentially normal.

Respondent exhibited restricted range of motion during Dr. Fait’s examination of the lumbar spine. Respondent was tender to palpation throughout his entire lower lumbar spine, although there was no evidence of appreciable spasm in the lumbar spine. The
remainder of the lumbar spine examination was normal, and Dr. Fait found no visible atrophy in Respondent’s legs.

Dr. Fait diagnosed Respondent with cervical spine degenerative disc disease and lumbar spine degenerative facet disease. Although the electromyography (EMG) in 2017 showed mild abnormalities resulting in previous diagnoses of radiculopathy, Dr. Fait disagreed with such a diagnosis. Dr. Fait explained that the EMG abnormalities were inconsistent with the abnormalities on Respondent’s lower back MRI’s, and Dr. Fait could not find evidence of formal radiculopathy on his examination of Respondent.

Dr. Fait did not find evidence of a condition that would preclude performance of Respondent's job duties. Therefore, Dr. Fait concluded that Respondent is not substantially incapacitated.

Respondent called John B Dorsey, M.D., to testify on his behalf. Dr. Dorsey, a board-certified Orthopedic Surgeon, has treated Respondent for his present complaints since early 2017. Dr. Dorsey last saw Respondent professionally in November 2018, and provided Respondent with anti-inflammatory medications, requested epidural injections, and provided Respondent with a Medrol Dosepak (a steroid that prevents the release of substances in the body that cause inflammation).

Dr. Dorsey disagreed with Dr. Fait’s opinion regarding Respondent’s radiculopathy, finding that Respondent had definite radiculopathy in a bilateral C-6 distribution, which was greater on the right than on the left. Radiculopathy results from damage to the nerve root, which causes pain, tingling, or numbness to other parts of the body.

Similar to the examination of Dr. Fait, Dr. Dorsey found Respondent’s range of motion to be limited in his lumbar spine and cervical spine. Dr. Dorsey explained that Respondent feels pain at the limits of his range of motion, which is accompanied by tingling and numbness in Respondent’s upper extremities. Dr. Dorsey found evidence of muscle spasm in Respondent’s neck.

In finding Respondent to be substantially incapacitated from performing his usual and customary job duties, Dr. Dorsey diagnosed Respondent with: 1) cervical radiculopathy, C6, with evidence of disc protrusion, C5-C6,3 mm, moderate left and mild-to-moderate right foraminal stenosis and disc protrusion, C-3-C4,2 mm, with mild bilateral foraminal stenosis; and 2) lumbar radiculopathy, L5, bilateral, right greater than left, with MRI scan disc herniation, L5-S1, left greater than right, with encroachment of the exit zone with compression of the SI nerve root; and chronic head pain, undetermined etiology. Dr. Dorsey does not think that Respondent can perform many of his duties as a Correctional Officer.

Respondent also testified on his own behalf. Respondent explained that, since his injury, his activities of daily living are severely limited. Respondent stated that he lives a largely sedentary lifestyle because of his injuries, which have not improved.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent’s appeal. The ALJ found that both doctors were credible,
“excellent witnesses.” However, Dr. Dorsey had a treating relationship with Respondent, whereas Dr. Fait saw Respondent once for a 30-minute examination. Although Dr. Fait was an excellent expert, the ALJ concluded that Dr. Dorsey was more persuasive given the amount of time he has spent evaluating Respondent. Moreover, Dr. Dorsey’s specialty includes back traumatology (spinal injury), and Dr. Fait’s specialty was hips and knees. So, the ALJ found Dr. Dorsey’s specialty to be more relevant, which made his testimony more credible.

The ALJ thus concluded that Respondent is eligible for industrial disability retirement. Respondent proved by a preponderance of the evidence that his disability was of a permanent or extended duration that incapacitated him for the performance of his duties as a Correctional Officer as a result of his orthopedic (neck and back) conditions.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

August 21, 2019

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