ATTACHMENT B

STAFF'S ARGUMENT

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STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Jessica V. Hernandez-Garnica (Respondent) applied for industrial disability retirement on July 10, 2023, based on orthopedic conditions (lower back, bilateral knees, bilateral shoulders and right thumb/wrist). By virtue of her employment as a Psychiatric Technician for the Department of State Hospitals - Patton (Respondent DSH), Respondent was a safety member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Nasser Heyrani, M.D., a board-certified orthopedic surgeon, performed an Independent Medical Examination (IME). Dr. Heyrani, interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Heyrani opined that Respondent was not substantially incapacitated from performing her usual job duties based on her orthopedic conditions.

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 her position based on her orthopedic conditions. However, Respondent was approved for disability retirement based on another condition and has been receiving disability retirement benefits since July 10, 2023.

Respondent appealed CalPERS' determination that she is not substantially incapacitated based on her orthopedic conditions and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on July 31, 2025. Respondent represented herself at the hearing. Respondent DSH did not appear at the hearing, and a default was taken as to Respondent DSH only, pursuant to Government Code section 11520.

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, answered Respondent's questions, and clarified how to obtain further information on the process.

At the hearing, Dr. Heyrani testified in a manner consistent with his examination of Respondent and the IME report. Dr. Heyrani opined that based on his examination and review of evidence, Respondent is capable of performing her usual job duties. Dr.

Heyrani noted that Respondent had benign findings and unremarkable MRI findings, but the minor impairments do not rise to the level of incapacity. Dr. Heyrani also testified that he reviewed video surveillance evidence of Respondent, presented to him by CalPERS, and there was a discrepancy between Respondent's symptoms and the objective diagnostic findings. Dr. Heyrani also noted that Respondent was not putting forth her best effort during the medical examination.

Respondent testified on her own behalf that she cannot perform her usual job duties, and she is afraid of sustaining an injury at work. Respondent did not call anyone to testify on her behalf and did not present any medical records.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent has "some orthopedic conditions that cause her pain and discomfort." However, Respondent failed to demonstrate that such conditions are substantially incapacitating and prevent her from performing her job duties.

The ALJ concluded that Respondent is not eligible for industrial disability retirement.

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

November 19, 2025

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Preet Kaur
Senior Attorney