ATTACHMENT B

STAFF'S ARGUMENT

Attachment B

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED

Savanna A. Dambacher (Respondent) was employed by County of Shasta (Respondent County) as an Employment and Training Worker II. By virtue of her employment, Respondent was a local miscellaneous member of CalPERS. On or about April 13, 2021, Respondent submitted an application for disability retirement (DR) on the basis of a rheumatological condition (fibromyalgia) and orthopedic condition (neck and back). On July 22, 2021, with respect to only her orthopedic condition, the application was approved in part by CalPERS and she retired effective April 1, 2021.

On August 24, 2023, CalPERS notified Respondent that it conducts reexamination of persons on DR, and that she would be reevaluated for purposes of determining whether she remains substantially incapacitated based on her orthopedic condition (neck and back) and whether she is entitled to continue to receive a DR.

As part of CalPERS' review of Respondent's medical condition, Respondent was sent for an Independent Medical Examination (IME) to Robert K. Henrichsen, M.D., a board-certified Orthopedic Surgeon regarding her orthopedic condition (neck and back). Separately Scott T. Anderson, M.D., a board-certified Rheumatologist, performed an IME of Respondent regarding her rheumatological condition (fibromyalgia). Both Dr. Henrichsen and Dr. Anderson interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Anderson and Dr. Henrichsen each opined that Respondent was not substantially incapacitated from the performance of her usual and customary job duties as an Employment and Training Worker II for Respondent County.

To be eligible for DR, competent medical evidence must demonstrate that the individual remains substantially incapacitated from performing the usual and customary duties of her former 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: (1) that Respondent was not substantially incapacitated from the performance of her usual and customary duties due to any rheumatologic condition (fibromyalgia); and, (2) Respondent was no longer substantially incapacitated from the performance of her usual and customary duties due to her orthopedic condition (neck and back). Since Respondent was no longer eligible for DR, CalPERS further determined that she should therefore be reinstated to her former position.

Respondent appealed this determination and exercised her right to a hearing on both issues before an Administrative Law Judge (ALJ) with the Office of Administrative

Hearings (OAH). Respondent and Respondent County did not appear at the hearing, despite both receiving timely and appropriate notice of the hearing. Therefore, a default was taken pursuant to Government Code section 11520 as to both Respondent and Respondent County.

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, both Dr. Henrichsen and Dr. Anderson testified in a manner consistent with their examinations of Respondent and their IME reports. Dr. Henrichsen testified that Respondent reported tenderness in her lower back, but upon examination found no evidence of muscle spasms, trigger points, muscle guarding, or nodules. Dr. Henrichsen noted that Respondent had some proximal thoracis kyphosis in her thoracic spine but otherwise described Respondent's range of motion in her spine as "reasonable." Range of motion in respondent's knees, hips, and elbows were within normal limits. Respondent also had appropriate function in the lumbar spine. Dr. Henrichsen also testified as to the IME report from Anthony Bellomo, M.D., the previous IME that found Respondent was substantially incapacitated. Dr. Henrichsen testified that after Dr. Bellomo's examination, Respondent no longer had muscle spasming, and better range of motion and less pain in both her cervical and lumbar spine. Another difference of significance was that Respondent no longer had muscle tenderness and had regained a normal heel-to-toe walk. Dr. Henrichsen concluded that Respondent is no longer substantially incapacitated from the performance of her usual and customary job duties due to any orthopedic condition.

Dr. Anderson testified that although he diagnosed Respondent with fibromyalgia, he explained that there were no objective findings coupled with that diagnosis that would prevent her from completing her usual job duties. Dr. Anderson explained that fibromyalgia was a non-specific syndrome characterized by subjective complaints of pain. However, Respondent's examination revealed that her condition was not associated with any objective findings that would cause her incapacity such as the destruction of joints, muscle damage or paralysis. In his medical opinion as an internal medicine doctor, treatment for Respondent's fibromyalgia is generally conservative and typically involves maintaining a regular sleep cycle, appropriate nutrition, and low levels of aerobic and strength exercises. Dr. Anderson also testified that he believed that Respondent did not put forth her best effort during the examination based on her being aggressive and uncooperative at times and refusing further interventions to treat her symptoms. Dr. Anderson concluded that Respondent is not substantially incapacitated from the performance of her usual and customary job duties due to any rheumatological condition.

After considering all the evidence introduced, as well as arguments by CalPERS, the ALJ denied Respondent's appeal as to both issues. With respect to the denial of the DR

application on the rheumatological condition, the ALJ found Respondent bears the burden of proof, through competent medical evidence, that she was substantially incapacitated from performing her usual and customary duties as an Employment and Training Worker II at the time of her application for DR. Respondent failed to appear at the hearing or produce any evidence to meet her burden; on the contrary, the ALJ found that CalPERS' medical evidence established that Respondent was not substantially incapacitated as to her rheumatological condition.

With respect to the reevaluation issue regarding Respondent's orthopedic condition, the ALJ found that CalPERS had met its burden of proof, through competent medical evidence, that Respondent was no longer substantially incapacitated. The ALJ found that the testimony and evidence from Dr. Henrichsen established that aside from a slight decrease in range of motion "there was no objective evidence that [R]espondent is substantially incapacitated in any way." Accordingly, the ALJ denied Respondent's appeal as to both issues and concluded that: (1) Respondent was not substantially incapacitated from the performance of her usual and customary duties due to any rheumatologic condition (fibromyalgia); and, (2) Respondent was no longer substantially incapacitated from the performance of her usual and customary duties due to her orthopedic condition (neck and back).

Pursuant to Government Code section 11517, subdivision (c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." To avoid ambiguity, staff recommends that on page 3, paragraph 5, "rheumatological" be replaced with "orthopedic" and on page 13, paragraph 5, "uncertain" be deleted and "employees" be changed to "employing."

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

November 19, 2025

Bryan Delgado
Senior Attorney