

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Sakaria F. Tagaloa (Respondent) filed an application for service retirement on March 4, 2016, and has been receiving service retirement benefits since June 25, 2016. Two years later, on June 21, 2018, he applied for industrial disability retirement based on an internal (heart) condition. By virtue of his employment as a Correctional Officer for Respondent San Quentin State Prison, 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, Thomas E. Leonard, M.D., a board-certified Internist performed an Independent Medical Examination (IME). Dr. Thomas interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, reviewed his medical records and performed a physical examination. Dr. Thomas opined that Respondent would not be precluded from performing his job duties and that he is not substantially incapacitated.

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 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 January 30, 2020. Respondent was represented by counsel at the hearing. Respondent CDCR did not appear at the hearing.

Copies of written job descriptions for the position of Correctional Officer for Respondent CDCR were received into evidence and considered by the ALJ.

At the hearing, Dr. Leonard testified in a manner consistent with his examination of Respondent and his IME reports. Dr. Leonard's medical opinion is Respondent has a history of cardiac conditions; but all cardiac conditions were under reasonable control and have allowed him to continue to work until he voluntarily retired on service on June 25, 2016. He opined that Respondent was temporarily incapacitated as of February 11, 2017, following his coronary bypass surgery, but Respondent has fully recovered from the

surgery and his overall condition was better than it was before he service retired. Dr. Leonard further opined that Respondent has worked for four years as a Correctional Officer while on anticoagulation medication and Respondent's anticoagulation medication does not prevent him from performing his duties. Therefore, Respondent is not substantially incapacitated.

Respondent did not testify, did not call any witnesses to testify, and did not submit any evidence to support his appeal.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found as follows:

The opinions of Dr. Leonard were unrebutted and persuasive. Respondent Tagaloa contends that his anti-coagulant medication renders him unable to perform his duties due to an elevated risk of bleeding if injured on duty. However, he presented no evidence to support that claim and Dr. Leonard disagrees. Respondent Tagaloa did not establish that he was substantially incapacitated for the performance of his duties as a correctional officer on June 25, 2016, when he separated from employment, or on June 21, 2018, when he filed his application for industrial disability retirement.

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

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends that the definition of the term "incapacitated for the performance of duty" be corrected from "disability of permanent or extended and uncertain duration . . . on the basis of competent medical opinion" to "disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death . . . on the basis of competent medical opinion" on page 7, paragraph 2, line 4 of the Proposed Decision and replacing the date "December 1, 2018" with "December 13, 2018" on page 3, paragraph 5 of the Proposed Decision.

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

April 21, 2020

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Attorney