

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Tinomeneta M. Taupau (Respondent) applied for industrial disability retirement based on neurological (brain, head, viral meningitis, headaches, neck, cognitive and dizziness) and psychological conditions. By virtue of his employment as a Correctional Officer for Respondent R.J. Donovan Correctional Facility, California Department of Corrections and Rehabilitation (CDCR), Respondent is a state safety member of CalPERS.

Respondent filed an application for industrial disability retirement on June 1, 2017, based on neurological conditions. Following review of competent medical evidence regarding Respondent's neurological conditions, CalPERS determined that he was not substantially incapacitated from performing the duties of his position.

Respondent appealed the determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). The matter was set for hearing on May 17, 2019. At the hearing, Respondent requested CalPERS review conditions not previously alleged on his June 1, 2017 application. Respondent and CalPERS agreed that the matter was not ripe for hearing and that Respondent should be allowed to amend his application so that CalPERS could consider his claimed psychological conditions. By letter dated May 22, 2019, Respondent amended his industrial disability retirement application to include psychological conditions.

As part of CalPERS' review of Respondent's medical conditions, Shen Ye Wang, M.D., a board-certified Neurologist performed a neurological Independent Medical Examination (IME). Dr. Wang 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. Wang opined that Respondent was not substantially incapacitated from performing his usual job duties as a Correctional Officer. After Respondent amended his application to include psychological condition, Dr. Wang reviewed additional medical records and confirmed his original opinion that Respondent was not substantially incapacitated.

Matthew F. Carroll, M.D., a board-certified Psychiatrist, performed a psychiatric Independent Medical Examination (IME). Dr. Carroll interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, reviewed his medical records, administered psychological testing, and performed a mental status examination. Dr. Carroll opined that Respondent was not substantially incapacitated from performing his usual 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.

A hearing was held on July 12, 2021. Neither Respondent nor CDCR appeared at the hearing. The ALJ found that the matter could proceed as a default against both Respondents, pursuant to Government Code section 11520.

At the hearing, both doctors testified in a manner consistent with their examination of Respondent and IME reports. Dr. Wang's medical opinion is that there were absolutely no objective signs to support Respondent's subjective complaints. Therefore, Dr. Wang's competent medical opinion is that Respondent is not substantially incapacitated. Dr. Carroll's medical opinion is that Respondent's psychological condition does not preclude him from performing his usual and customary duties as a Correctional Officer and there was no objective medical evidence demonstrating Respondent had memory or cognitive problems. Therefore, Dr. Carroll's competent medical opinion is that Respondent is not substantially incapacitated.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent failed to appear at the hearing, did not present any evidence, and did not meet his burden of proof. The ALJ found that even though CalPERS did not have the burden of proof, it presented competent medical evidence from Drs. Wang and Carroll that established Respondent was not substantially incapacitated from performing his usual and customary job duties. 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 correcting the date "May 20, 2021" to "July 12, 2021" in the third paragraph on page 2 of the Proposed Decision and correcting "disability of permanent or extended and uncertain duration" to "disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death" in paragraph 2. on page 11 of the Proposed Decision.

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

November 17, 2021

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Staff Attorney