

ATTACHMENT B

STAFF'S ARGUMENT

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

Juan M. Carrillo (Respondent) applied for industrial disability retirement based on orthopedic (bilateral knees, hips, left shoulder, and back) conditions. By virtue of his employment as a Correctional Officer for Respondent Valley State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS. Respondent filed an application for industrial disability retirement on December 30, 2020.

As part of CalPERS' review of Respondent's medical condition, Don T. Williams, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Williams 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 comprehensive physical examination. Dr. Williams opined that Respondent is not substantially incapacitated from the performance of his Correctional Officer job duties.

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 January 11, 2022. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing. The ALJ found that the matter could proceed as a default against Respondent CDCR, pursuant to Government Code section 11520(a).

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing, Dr. Williams testified in a manner consistent with his examination of Respondent and the IME reports. Dr. Williams' medical opinion is that Respondent's objective findings do not substantiate Respondent's subjective complaints of disabling limitations. Therefore, Dr. Williams' competent medical opinion is that Respondent is not

substantially incapacitated from performing the usual duties of his position as a Correctional Officer.

Respondent testified on his own behalf about his medical condition and limitations. Respondent did not call any physicians or other medical professionals to testify, nor did he submit medical records 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 that Respondent holds the burden of proof and failed to offer sufficient competent medical evidence to establish that he is substantially incapacitated from performing the usual duties of his position as a Correctional Officer. The ALJ found Dr. Williams' opinion to be persuasive and supported by his independent clinical findings. 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 "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 under the Legal Conclusions section, on page 8 of the Proposed Decision.

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

March 16, 2022

Helen L. Louie
Attorney