

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Craig M. Culp (Respondent) was employed by Respondent California Highway Patrol (Respondent CHP) as a dispatcher. By virtue of his employment, Respondent was a state safety member of CalPERS. On April 6, 2017, Respondent applied for industrial disability retirement based on his orthopedic (left elbow, left wrist, neck) conditions. CalPERS approved the disability retirement application and placed Respondent on disability retirement effective February 22, 2017.

In 2020, CalPERS staff notified Respondent that CalPERS conducts reexamination of persons on disability retirement, and that he would be reevaluated for purposes of determining whether he remains substantially incapacitated and is entitled to continue to receive an industrial disability retirement.

In order to remain eligible for disability retirement, competent medical evidence must demonstrate that the individual remains substantially incapacitated from performing the usual and customary duties of his 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.

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. Dr. Henrichsen interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed medical records. He also performed a physical examination of Respondent and prepared a written report summarizing his findings upon examination. Dr. Henrichsen opined that Respondent was no longer substantially incapacitated from performing his job duties.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was no longer substantially incapacitated, was no longer eligible for industrial disability retirement, and should therefore be reinstated to his former position as a Dispatcher.

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 May 12, 2022. Respondent represented himself at the hearing. Respondent CHP did not appear at the hearing, and a default was taken as to Respondent CHP only.

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. Henrichsen testified in a manner consistent with his examination of Respondent and his IME report. Dr. Henrichsen examined Respondent's neck and upper extremities as part of his physical examination. Dr. Henrichsen found that Respondent's range of motion in his neck was reduced when looking up toward the ceiling, but otherwise his neck motion was appropriate. Respondent's shoulder function was normal, elbow range of motion was normal, and there was no evidence of active tendonitis in Respondent's left elbow. Dr. Henrichsen found that Respondent had "minor" tendonitis, which is inflammation around the tendons, but his wrist joints were normal and the sensation in his fingers and hands was intact.

Dr. Henrichsen opined that Respondent does not have an "actual and present orthopedic impairment that rises to the level of substantial incapacity." Respondent's reported symptoms were "much greater than findings and actually his symptoms are not supported by objective findings." Dr. Henrichsen further opined that "the objective imaging and electrical studies based on the records do not support a substantial amount of impairment." Dr. Henrichsen concluded that "he does not have substantial incapacity because he does not have a reasonable amount of supportive objective abnormal findings."

Respondent testified that when he worked as a Dispatcher, he had to be able to timely answer calls and relay information in life and death situations. Respondent does not believe he can perform the job with any limitations. Respondent testified that the repetitive motions and typing requirements caused him pain which increased over time. Further, holding a telephone receiver with his neck and shoulder while he was typing also caused him shooting pain. Respondent testified that the pain increased to the point that he felt he could no longer perform his duties.

When Respondent retired, he sold cars for a few months. For the last several years, he has worked for his family's pest control business. His duties include traveling to customers' homes and generating service estimates. He works 20 to 30 hours per week depending on the workload.

The ALJ found that CalPERS established that Respondent is no longer disabled or substantially incapacitated from performing the usual duties of a Dispatcher for the CHP. Dr. Henrichsen persuasively testified that there is no objective medical evidence showing that Respondent is unable to perform the duties of a Dispatcher for the CHP. Respondent's range of motion limitations in his neck and subjective complaints of pain do not rise to the level of substantial incapacity for performance of his duties as a Dispatcher.

After considering all of the evidence introduced as well as arguments by the parties at the hearing, the ALJ denied Respondent's appeal. The ALJ found that Respondent was no longer substantially incapacitated from performing his job duties as a Dispatcher.

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

July 13, 2022

---

Austa Wakily  
Senior Attorney