

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

On January 6, 2022, Enrique Rios (Respondent) submitted a Service Pending Disability Retirement application based on a rheumatological (joints) condition. Respondent has been receiving service retirement benefits since then. By virtue of his employment as a Conservationist Supervisor for Respondent California Conservation Corps (Respondent CCC), Respondent was a state miscellaneous member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Scott T. Anderson, M.D., board-certified in Internal Medicine and Rheumatology, performed an Independent Medical Examination (IME). Dr. Anderson 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 thorough physical examination. Dr. Anderson opined that Respondent does not have a rheumatological condition that arises to the level of substantial incapacity to perform his job duties.

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 their 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). Two days of hearing were held on January 24 and March 16, 2023. Respondent represented himself at the hearing. No appearance was made by or on behalf of Respondent CCC, and the matter proceeded as a default against it pursuant to Government Code section 11520, subdivision (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, answered Respondent's questions, and clarified how to obtain further information on the process.

At the hearing, Dr. Anderson testified in a manner consistent with his examination of Respondent and his IME report. Dr. Anderson testified that Respondent does not have a present rheumatological problem that arises to the level of substantial incapacity to perform his job duties. While Dr. Anderson acknowledges that Respondent does have some tenderness over his elbows (commonly known as tennis elbow), he has no objective findings or history showing rheumatoid disease. Respondent had full range of motion in his extremities, no joint instability, no fractures, and no dislocations. His muscle mass, reflexes, strength, and sensations were all within normal limits.

Dr. Anderson believes Respondent's pain is the result of degenerative conditions due to aging. Dr. Anderson concluded that Respondent is not substantially incapacitated from performing his usual job duties based on a rheumatological condition.

Respondent testified on his own behalf that his job "requires a lot of physical work," and that in addition to office work, he ensures crew safety in the field. He asserted that his job is "more demanding" than what is stated on the duty statement. It requires "a lot of hiking," "catching all potential hazards for the crew to do their work," and "lifting." He added that Dr. Anderson "is not in my shoes to do what is required for my job." Respondent believes his health issues are related to COVID-19. He is concerned not only with his health; he is also concerned with his financial situation, which prompted him to file his disability application with CalPERS. Respondent did not call any physicians or other medical professionals to testify on his behalf.

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 did not meet his burden to establish by competent medical evidence that he is substantially incapacitated from the performance of his usual job duties. No medical expert testified on Respondent's behalf, and none of Respondent's medical reports submitted into evidence addressed CalPERS's disability retirement standards. Respondent presented no objective medical evidence from any medical practitioner to establish substantial incapacity based on a rheumatological (joints) condition. Accordingly, the ALJ concluded that Respondent is not eligible for disability retirement and denied his application.

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 deleting "and uncertain" between the words extended and duration in paragraph 2. under the Legal Conclusions section, on page 12 of the Proposed Decision.

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

June 22, 2023

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Nhung Dao  
Attorney