

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

On August 9, 2021, Jeffrey Springer, Jr. (Respondent) applied for industrial disability retirement (IDR) based on internal conditions (chronic renal disease, deep vein thrombosis, hypertension), and podiatric conditions (bilateral foot pain). By virtue of his employment as a Correctional Officer for Respondent Richard J. Donovan Correctional Facility, 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, Suvesh Chandiok, M.D., a board-certified physician in internal medicine and endocrinology, performed an Independent Medical Examination (IME) concerning Respondent's internal conditions. Jay K. Benard D.P.M., a board-certified Podiatric Surgeon, performed an IME concerning Respondent's podiatric conditions. Both IMEs interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Both IMEs opined that Respondent was not substantially incapacitated for the performance of his usual and customary duties as a Correctional Officer.

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 usual duties of his position. Because CalPERS received Respondent's IDR application on August 9, 2021, more than nine months after his last day on payroll, CalPERS also determined that the effective date of his IDR application was August 1, 2021.

Respondent appealed both determinations 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 March 27 and April 3, 2025. On the second day of hearing, Respondent withdrew his appeal regarding the effective date of retirement. Accordingly, the ALJ only determined the issue whether Respondent is substantially incapacitated from the performance of his usual job duties. Respondent was represented by counsel during both days of hearing. Respondent CDCR did not appear on either day of hearing.

Prior to the hearing and before Respondent retained counsel, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents.

At the hearing, Dr. Chandiok and Dr. Bernard both testified in a manner consistent with their examinations of Respondent and their IME reports. Dr. Chandiok testified that Respondent's "biggest problems" were obesity and uncontrolled diabetes. Dr. Chandiok stated that Respondent did not have an irregular heartbeat, his electrocardiogram was unremarkable, his hypertension was well controlled, and there was no indication of acute renal failure or kidney disease. Dr. Chandiok concluded that Respondent was not substantially incapacitated for the performance of his usual job duties due to any internal conditions.

Dr. Benard testified that Respondent has "garden variety plantar fasciitis" and that it was extremely rare for plantar fasciitis to "persist more than a year or two with appropriate treatment." Dr. Benard observed during his examination that Respondent was using a cane to aid walking, but he did not believe that any physical findings would require Respondent to use a cane. Dr. Bernard concluded that Respondent was not substantially incapacitated for the performance of his usual job duties due to any podiatric conditions.

Regarding his podiatric condition, Respondent called Dr. Leslie Levy, D.P.M., board-certified Podiatric Surgeon to testify on his behalf. Dr. Levy conducted several physical examinations of Respondent related to his workers' compensation claim. After reviewing Respondent's medical records and essential functions of his position, Dr. Levy testified that Respondent suffered from "diabetic neuropathy" in his feet and diagnosed him with bilateral plantar fasciitis, bilateral diabetic neuropathy, and "gait derangement." Dr. Levy previously imposed workplace restrictions on Respondent of "no prolonged standing and walking, no heavy lifting, even ground preferred." Dr. Levy opined that Respondent was substantially incapacitated for the performance of his usual and customary duties as a Correctional Officer because the workplace restrictions were fundamentally inconsistent with him completing his usual job duties.

Respondent testified at the hearing that he is unable to walk for a long period of time, needs to utilize a cane for assistance, and is unable to perform many of the physical requirements of his job as a Correctional Officer, including constantly standing, walking, climbing, or lifting up to 50 pounds. Respondent submitted medical records regarding his podiatric condition from his treating physicians and his workers' compensation claim to support his appeal. The ALJ found that Respondent testified in an open and forthright manner consistent with one who is being truthful.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ granted in part and denied in part Respondent's appeal. The ALJ found Dr. Levy's opinion more reliable and trustworthy than Dr. Bernard's because Dr. Levy has completed more IME's and has expertise in treating plantar fasciitis. Regarding Respondent's internal condition, the ALJ found Dr. Chandiok's testimony and reports provided competent medical evidence that Respondent's internal conditions did not substantially incapacitate him.

The ALJ concluded that Respondent is substantially incapacitated for the performance of his duties as a Correctional Officer due to his podiatric conditions, but not due to any internal conditions.

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

June 18, 2025

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