ATTACHMENT B

STAFF'S ARGUMENT

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STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

On July 20, 2023, John B. Vice (Respondent) applied for Industrial Disability Retirement (IDR) based on orthopedic (right foot) and cardiovascular (blood clot) conditions. By virtue of his employment as a Correctional Officer for California Medical 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, Lance C. Zimmerman, D.P.M., a board-certified Podiatrist, performed an Independent Medical Examination (IME). Dr. Zimmerman interviewed Respondent, reviewed his work history and job description, obtained a history of his past and present complaints, and reviewed his medical records. During the IME, there were objective findings that were inconsistent with Respondent's subjective complaints. For example, Respondent had indicated pain when pressure was applied to a surgical site but had no recoil response. Dr. Zimmerman also found no edema at the surgical site, meaning there was no evidence of an ongoing inflammatory process that would indicate the joint was even partially or fully dislocated. Dr. Zimmerman also reviewed surveillance video taken of Respondent, which showed him wearing flip-flop sandals and climbing on a stepstool, both of which were inconsistent with Respondent's gait and ability to move during examination. Dr. Zimmerman opined that Respondent was not substantially incapacitated from the performance of his usual job duties as a Correctional Officer with Respondent CDCR.

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 due to any orthopedic (right foot) condition. CalPERS notified Respondent that he provided insufficient medical evidence regarding his cardiovascular condition for CalPERS to make a determination on that condition. He was invited to provide additional evidence on the cardiovascular condition, but he failed to do so.

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 29, 2025. Respondent and Respondent CDCR did not appear at the hearing, despite both receiving timely and appropriate notice of the hearing. Therefore, a default was taken as to both Respondent and Respondent CDCR.

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, a CalPERS Investigator testified that he had completed surveillance of Respondent for several days in October and November 2023. Surveillance showed Respondent walking outside of his home wearing flip-flop sandals, walking through a grocery store and climbing up a stepstool to remove Halloween decorations without any apparent difficulty. The surveillance DVD and an investigation report summarizing its contents were admitted into evidence at the hearing.

Dr. Zimmerman testified at the hearing that Respondent sustained only a minor rupture of ligament fibers that hold the base of the right third metatarsal base in Respondent's foot. Respondent's reports of severe pain were inconsistent with the physical findings from examination and the surveillance video showing him walking on several occasions without any gait disturbance or the presence of observable pain. Dr. Zimmerman opined that wearing flip-flop sandals should have aggravated Respondent's claimed symptoms, but there was no sign of this. Based on the surveillance video, and his examination and review of medical records, Dr. Zimmerman concluded that Respondent was not substantially incapacitated for the performance of his usual and customary job duties due to any orthopedic (right foot) condition.

After considering all the evidence introduced, as well as argument by CalPERS, the ALJ denied Respondent's appeal. The ALJ found that Respondent bears the burden of proving, by competent medical evidence, that he was substantially incapacitated from performing his usual and customary duties as a Correctional Officer at the time of his application for IDR. Respondent failed to appear at the hearing or produce any evidence to meet his burden. Further, the ALJ found that CalPERS' medical evidence and surveillance materials established that Respondent was not disabled. Accordingly, the ALJ concluded that Respondent was not substantially incapacitated from the performance of his usual and customary duties as a Correctional Officer for Respondent CDCR due to any orthopedic condition (right foot) at the time of his IDR application.

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

September 17, 2025

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