

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

On January 22, 2024, Jeffrey A. McGlone (Respondent) applied for Industrial Disability Retirement (IDR) based on orthopedic (right shoulder, elbow and knee) and podiatric (right ankle) conditions. By virtue of his employment as a Correctional Officer for California State Prison - Sacramento; 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 conditions, Nasser Heyrani, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME) concerning his orthopedic conditions. Dr. Heyrani found a lack of any objective evidence of impairment that supported Respondent's subjective complaints of pain. Separately, Sean Dougherty, D.P.M., a board-certified Podiatrist, performed an IME concerning Respondent's podiatric conditions. Dr. Dougherty similarly found Respondent's complaints of pain were inconsistent with the objective findings and that Respondent's foot strength was within normal limits. 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 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 or podiatric condition.

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 August 14, 2025. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing and a default was taken, pursuant to Government Code section 11520, as to Respondent CDCR 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, answered Respondent's questions, and clarified how to obtain further information on the process.

At the hearing, a CalPERS Investigator testified that she had completed surveillance of Respondent for several days in March and April 2024. Surveillance showed Respondent engaging in daily activities of living, jogging, pushing a grocery cart, and entering and exiting a vehicle. The surveillance DVD and an investigation report summarizing its contents were admitted into evidence at the hearing.

At the hearing, both Dr. Heyrani and Dr. Dougherty testified in a manner consistent with their examinations of Respondent and their IME reports. Dr. Heyrani testified that Respondent had normal range of motion in his right elbow, wrist and hand. The examination also confirmed the absence of any obvious deformities and strength within normal limits for Respondent's orthopedic extremities. Respondent reported muscle tenderness and pain during the examination, but Dr. Heyrani testified that the lack of any objective evidence was inconsistent with Respondent's subjective complaints of pain. Dr. Heyrani also testified that the surveillance video showed activities of daily living that were inconsistent with what Respondent identified he could complete, such as jogging and standing for long durations. Based on the surveillance video, and his examination and review of the medical records, Dr. Heyrani concluded in his testimony that Respondent is not substantially incapacitated for the performance of his usual and customary job duties due to any orthopedic (right shoulder, elbow and knee) condition.

Dr. Dougherty similarly testified at hearing that Respondent's subjective complaints of pain pertaining to his ankle were also inconsistent with the available objective medical evidence upon examination and review of medical records. Although Respondent had surgery to his right ankle, Dr. Dougherty found that Respondent had recovered and Respondent's feet and ankles had strength within normal limits. Dr. Dougherty concluded in his testimony that Respondent is not substantially incapacitated for the performance of his usual and customary job duties due to any podiatric (right ankle) condition.

Respondent testified on his own behalf at the hearing that in his opinion he has not fully recovered and he has pain in his right knee and ankle. Due to this pain, Respondent believes that he is unable to perform his usual and customary job duties. Respondent did not call on any medical professionals or submit any evidence to support his position.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent did not prove by competent medical evidence that he was substantially incapacitated from the performance of his usual job duties at the time he applied for IDR. The ALJ reasoned that under the applicable CalPERS standard, pain and physical limitations associated with pain are insufficient to establish that a person is substantially incapacitated. 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 (right shoulder, elbow and knee) or podiatric (right ankle) conditions at the time of his IDR 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 that on page 10, paragraph 2, “uncertain” be deleted and “employees” be changed to “employing.”

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

November 19, 2025

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