

ATTACHMENT B

STAFF'S ARGUMENT

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

On January 30, 2023, Reginald Dalton (Respondent) applied for Industrial Disability Retirement (IDR) based on an orthopedic condition (lower back). By virtue of his employment as a Materials & Store Supervisor I 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 condition, Anthony F. Bellomo, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Bellomo interviewed Respondent, reviewed his work history and job description, obtained a history of his past and present complaints, and reviewed his medical records. On July 17, 2023, Dr. Bellomo examined Respondent and diagnosed him only with lower back pain after finding slight muscle tenderness and loss of range of motion and the lack of any muscle spasming. Dr. Bellomo also reviewed surveillance video that showed Respondent engaging in yardwork, riding a bike without difficulty and fully bending on several occasions. Dr. Bellomo opined in his July 2023 IME report that Respondent was not substantially incapacitated from the performance of his usual and customary duties as a Materials and Stores Supervisor I for Respondent CDCR due to an orthopedic condition (lower back).

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 report, CalPERS determined that Respondent was not substantially incapacitated from performing the usual and customary 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). A hearing was held on January 27, 2025 and August 27, 2025. Respondent represented himself at both days of hearing. Respondent CDCR did not appear at either day of 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.

On January 27, 2025, the first day of hearing, a CalPERS Investigator testified that he had completed surveillance of Respondent for several days in May of 2023. Surveillance showed Respondent doing strenuous yardwork, riding a bike without difficulty and fully bending on several occasions. The surveillance DVD and an investigation report summarizing its contents were admitted into evidence at the hearing.

Also on the first day of hearing, Dr. Bellomo testified in a manner consistent with his examination of Respondent and his July 2023 IME report. Based on the information available at that time, Dr. Bellomo found only slight muscle tenderness but no paraspinous muscle spasming in the lower back. Respondent was otherwise found to have sufficiently normal strength and range of motion to complete his usual job duties. Dr. Bellomo concluded his testimony by indicating that Respondent was not substantially incapacitated for the performance of his usual and customary job duties.

The record remained open after the first day of hearing to allow Respondent the opportunity to submit additional medical exhibits, which he provided on February 14, 2025. On March 31, 2025, Dr. Bellomo completed a supplemental IME report after reviewing the additional medical records submitted by Respondent. Based upon review of those additional medical records, Dr. Bellomo testified at the second day of hearing that Respondent became substantially incapacitated as of August 18, 2024, the date of a Qualified Medical Evaluation completed by Dr. Larry H. Woodcox. Dr. Bellomo testified that after his July 2023 examination, Respondent's physical condition had progressed, and the later reports showed Respondent had paraspinous muscle spasming. However, since the paraspinous muscle spasming was not present during his July 2023 examination, Dr. Bellomo was confident that Respondent was not substantially incapacitated until August 18, 2024, the date records showed that the spasming was present.

At the second day of hearing, a CalPERS Staff Services Manager I testified that Respondent's IDR application continued to be denied because the date he was determined to be substantially incapacitated did not relate back to his discontinuance of state service. The manager testified that Respondent's discontinuance of state service was in March 2023 and that Dr. Bellomo had opined that Respondent was not substantially incapacitated until August 18, 2024.

At both days of hearing, Respondent testified on his own behalf that based on his opinion, he cannot meet the physical requirements of his position. Respondent submitted medical records from his treating physicians to support his appeal. After hearsay objections to the medical records were overruled, his medical records were admitted as direct evidence despite Respondent failing to call any medical professionals to testify on his behalf or to authenticate any of his medical records.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent's appeal. The ALJ concluded that the medical records

from Respondent's treating physicians established a consistency of his symptoms since his injury occurred in September 2021. The ALJ further concluded that, although Dr. Bellomo found Respondent was not substantially incapacitated until August 18, 2024, the other medical records established that Respondent was substantially incapacitated when he submitted his IDR application in January 2023. Accordingly, the ALJ concluded that Respondent was substantially incapacitated from the performance of his usual and customary duties as a Materials and Stores Supervisor I for Respondent CDCR due to an orthopedic condition (lower back) at the time of his IDR application. The ALJ further ordered that any dispute as to whether the disability is industrial or nonindustrial shall be resolved pursuant to Government Code section 21166.

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 8, paragraph 21, "July 2025" be replaced with "July 2023."

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

November 19, 2025

Bryan Delgado
Senior Attorney