

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Samuel Presten (Respondent) was an Equipment Operator II for the Department of Transportation District 10 (Respondent Caltrans). By virtue of his employment with Respondent Caltrans, Respondent was a state miscellaneous member of CalPERS. Respondent applied for disability retirement based on a pulmonary condition (disseminated coccidiomycosis).

As part of CalPERS' review of Respondent's medical condition, Omar Tirmizi, M.D., a board-certified Internist, performed an Independent Medical Examination (IME). Dr. Tirmizi interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Tirmizi prepared an initial report and two supplemental reports. Dr. Tirmizi opined that Respondent was not substantially disabled by any pulmonary condition.

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.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. A hearing was held on August 25, 2025. Respondent was represented by counsel at the hearing. Respondent Caltrans did not appear at the hearing.

At the hearing, Dr. Tirmizi testified in a manner consistent with his examination of Respondent and the IME report. In his initial IME report dated October 7, 2023, Dr. Tirmizi opined that Respondent was not disabled due to his pulmonary condition. Dr. Tirmizi based his opinion on: (1) his physical examination of Respondent, which included findings of normal oxygen saturation and resting respiration; (2) medical records from Stewart Lonky, M.D., finding no pulmonary impairment; (3) Dr. Tirmizi's review of Respondent's chest computed tomography (CT) scan results showing normal pulmonary parenchyma (i.e., lung tissue); and (4) Dr. Tirmizi's review of Respondent's pulmonary study test results showing his titers have normalized since 2020. Dr. Tirmizi testified that Respondent would likely require lifelong antifungal therapy; however, this did not result in substantial incapacity.

Dr. Tirmizi prepared a supplemental IME report on November 8, 2023, after he was provided Dr. Lonky's complete evaluation report dated January 11, 2020. Dr. Tirmizi testified that Dr. Lonky found Respondent's pulmonary function studies remained normal. Dr. Tirmizi concluded that in the absence of any new and further opinions rendered by

Dr. Lonky or any new testing contrary to previous reports, his opinion remained unchanged.

In his second supplemental report dated January 12, 2024, Dr. Tirmizi reviewed additional medical records consisting of a report by Kheng Xiong, P.A. In his report, Mr. Xiong diagnosed Respondent as having disseminated coccidioidomycosis, weakened immune system, and poor physical condition. Based on his review of Mr. Xiong's report, Dr. Tirmizi concluded that his opinion remains unchanged because there were no medical records supporting Mr. Xiong's diagnoses.

Dr. Tirmizi testified that he did not review Respondent's pulmonary function test dated August 31, 2023. However, Dr. Tirmizi pointed to the evaluation report of Dr. Lonky dated March 14, 2025, which noted that the 2023 pulmonary function test results showed "mild-to-moderate obstructive pulmonary impairment." Dr. Tirmizi explained that the results were consistent with previous findings, therefore, his opinion that Respondent was not disabled due to his pulmonary condition did not change.

Respondent called his treating physician, Karthikeya Devireddy, M.D to testify on his behalf. Dr. Devireddy is licensed to practice internal medicine and has been treating Respondent since 2019. Dr. Devireddy opined that Respondent remains permanently disabled due to disseminated coccidioidomycosis. In a letter he prepared, dated August 13, 2025, Dr. Devireddy stated "[s]ince the onset of his illness, [Respondent] has had recurrent fatigue, generalized weakness, and exertional dyspnea. He is unable to walk more than two to three blocks without experiencing significant shortness of breath, and he requires [two] liters of supplemental oxygen via nasal cannula for any extended physical activity. . . He is also intolerant of any elevation or incline or elevation such as driving up to the mountains, as this exacerbates his oxygen desaturation and respiratory distress." Dr. Devireddy testified that his clinical observations are consistent with Respondent's subjective symptoms.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent failed to establish that he was substantially incapacitated from the performance of his usual job duties as an Equipment Operator II when he applied for disability retirement. Respondent did not present any objective medical evidence to dispute the test results from his pulmonary function studies and chest CT scan and to establish that he is substantially disabled by his pulmonary condition. The ALJ found Dr. Tirmizi's opinion that Respondent is not substantially incapacitated from the performance of his job duties due to his pulmonary condition more convincing because it is supported by his physical examination and objective test results.

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 changing the phrase "did have an actual" on page 5, paragraph 8 of the Proposed Decision to "did not have an actual" and deleting the word "industrial" in the first line of the first paragraph on page 3, and in paragraph 2, line 1 on page 3, and each time it appears on pages 9, 11, and 12.

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

January 20, 2026

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Senior Attorney