

ATTACHMENT B

STAFF'S ARGUMENT

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

Kevin J. McNeal (Respondent) worked as a Transportation Correctional Sergeant (TCS) for California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of this employment, Respondent is a state safety member of CalPERS.

In April 2022, Respondent applied for service retirement with a requested effective retirement date of April 8, 2022. In a letter dated April 21, 2022, CalPERS informed Respondent that his service retirement application was processed.

On April 28, 2023, Respondent requested to change his service retirement to industrial disability retirement. Respondent's application alleged he had "lower back, right knee, and left foot injuries." The application was subsequently amended to include Respondent's cardiac condition (hypertension) as a basis for industrial disability retirement.

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.

On September 13, 2023, Stuart Fischer, M.D., performed an independent medical evaluation (IME) of Respondent for his cardiac condition (hypertension). As part of his evaluation, Dr. Fischer reviewed medical records, the physical requirements and essential functions of Respondent's position, and physically examined Respondent. Dr. Fischer diagnosed Respondent with hypertension but noted that Respondent had no "evidence for hypertensive heart disease" and that Respondent's "blood pressure is under good control with a single medication." Dr. Fischer opined that Respondent was not substantially incapacitated from performing his job duties as a TCS due to hypertension.

In May and June of 2023, CalPERS requested medical records relating to Respondent's orthopedic conditions (lower back, left foot, and right knee). Respondent did not provide medical records in response to CalPERS' requests.

In a letter dated October 18, 2023, CalPERS denied Respondent's application for disability retirement based on his cardiac condition (hypertension). The letter further stated that CalPERS received insufficient medical records regarding Respondent's orthopedic conditions and therefore it was unable to decide on those conditions.

Respondent timely appealed CalPERS' determination. In his appeal, Respondent stated he was substantially incapacitated from the performance of his usual duties due to his left foot injury.

CalPERS issued a supplemental determination on June 30, 2025, denying Respondent's application for industrial disability retirement based on his orthopedic conditions.

CalPERS requested but did not receive medical records establishing that Respondent was continuously disabled based on his orthopedic conditions (lower back, left foot, and right knee) from the date of his service retirement to the time of his application for industrial disability retirement.

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 November 10, 2025. Respondent represented himself. Respondent CDCR did not appear at the hearing and a default was taken 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 hearing, CalPERS introduced testimony of a CalPERS' staff regarding several letters sent to Respondent requesting medical records relating to his orthopedic conditions. CalPERS requested medical records showing Respondent's orthopedic conditions at the time he was last employed for Respondent CDCR. Respondent provided CalPERS with a physician's report on disability form prepared by Jien Sup Kim, M.D. In the form, Dr. Kim noted that they first treated Respondent on February 22, 2023, for an injury that occurred on April 9, 2022, the day after Respondent retired for service. Dr. Kim included limited standing and walking as work restrictions for Respondent. Dr. Kim opined that Respondent was substantially incapacitated from performing his usual duties as a TCS.

CalPERS submitted the IME report of Dr. Fischer. Dr. Fischer performed an IME of Respondent for his cardiac condition (hypertension). In the IME report, Dr. Fischer diagnosed Respondent with hypertension but noted that he had no "evidence for hypertensive heart disease" and that Respondent's "blood pressure is under good control with a single medication." Dr. Fischer opined that Respondent was not substantially incapacitated from performing his usual duties as a TCS due to hypertension.

Respondent testified at the hearing about his job duties and the physical limitations caused by his orthopedic and cardiac conditions. Respondent was employed as a "bus" sergeant, but in the last year of his work he asked to go to the scheduling desk because he was having back pain and taking "a lot" of pain pills. When asked about the absence of medical records relating to his orthopedic conditions prior to April 2023, Respondent said he was treated by workers' compensation physicians. Respondent stated that hypertension is what "really drove me out."

Respondent submitted a qualified medical evaluation (QME) report prepared by Mitchell Geiger, M.D., to support his appeal. Dr. Geiger performed a qualified medical re-evaluation of Respondent on January 23, 2025. In his report, Dr. Geiger noted that he had performed a QME of Respondent on August 17, 2023, and prepared a supplemental QME report on February 22, 2024.

As part of his evaluation, Dr. Geiger reviewed medical records, the physical requirements and essential functions of Respondent's position, and physically examined Respondent. Dr. Geiger noted that Respondent had a workers' compensation claim regarding his lower back and that Respondent had settled that claim in 2020 and "reports no worsening impairment since that time." Dr. Geiger imposed work restrictions including no repetitive or heavy lifting, no repetitive pushing and/or pulling, bending or prolonged walking, and the ability to change positions from sitting to standing as needed.

The medical records presented by CalPERS and Respondent were admitted as administrative hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but cannot be used to support a finding.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The only reports provided during the hearing relating to Respondent's orthopedic conditions were all dated well after Respondent's retirement date of April 8, 2022. In fact, the reevaluation provided by Respondent is dated in 2025 and notes that the original QME was performed in August 2023, more than a year after Respondent retired for service.

The ALJ further noted that Respondent did not call any witnesses to testify about his medical conditions or reports. The ALJ held that without testimony, the reports received in evidence cannot establish a competent medical opinion on whether Respondent was substantially incapacitated for the performance of his usual duties as a TCS.

The ALJ concluded that Respondent failed to establish that he was substantially incapacitated for the performance of his usual duties as a TCS based on either his hypertension or orthopedic conditions.

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 adding "or orthopedic (lower back, left foot and right knee) conditions" after "cardiologic condition (hypertension)" on page 4, paragraph 11 of the Proposed Decision.

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

January 20, 2026

Austa Wakily
Senior Attorney