

**ATTACHMENT C**

**RESPONDENT'S ARGUMENT**

Kevin McNeal

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[REDACTED]

[REDACTED]

[REDACTED]

Date: 1-1-2026

Board Services Unit Coordinator

California Public Employees' Retirement System

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Sacramento, CA 94229-2701

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RE: Appeal of Denial — Disability Retirement Application

Applicant: Kevin J. McNeal

CalPERS ID #: [REDACTED]

Former Classification: Correctional Sergeant, CDCR

Employment Dates: April 9, 1994 – April 8, 2022

#### I. INTRODUCTION & BASIS OF APPEAL

I respectfully submit this appeal in response to CalPERS' denial of my application for disability retirement.

As demonstrated through objective medical evidence, including the Panel Qualified Medical Evaluation by Mitchell Geiger, M.D., dated January 23, 2025, and Permanent and Stationary status dated December 30, 2022, I am permanently incapacitated from performing the essential physical duties inherent to the Correctional Sergeant classification.

#### II. RESPONSE TO CALPERS' DETERMINATION AND DENIAL LANGUAGE

The determination dated October 18, 2023 states:

"Based on the evidence in those reports, we have determined your cardiologic (hypertension) condition is not disabling. As a result, we find you are not substantially incapacitated from the performance of your job duties as a Correctional Sergeant with the Department of Corrections."

"The medical evidence received is insufficient for us to make a determination on these [orthopedic] conditions."

Response:

While CalPERS denied disability retirement based on my cardiologic (hypertension) condition and cited insufficient orthopedic documentation at the time, subsequent and complete medical evidence now establishes permanent orthopedic impairment and substantial incapacity, independent of cardiologic factors. My Permanent and Stationary status dated December 30, 2022, and 60% Permanent Disability rating under the California Workers' Compensation system confirm lasting orthopedic functional loss affecting essential job duties.

### III. ADDRESSING "UNTIMELY" ISSUE FOR ORTHOPEDIC CONDITIONS

CalPERS later denied orthopedic considerations as "untimely." However, under Government Code § 21154, an application is timely if submitted while the member is physically incapacitated from the date of discontinuance of state service to the time of application. I was medically determined to be Permanent and Stationary as of December 30, 2022, well within the operative timeline. Consequently, my disability retirement claim for orthopedic conditions is timely under § 21154(d).

### IV. LEGAL STANDARD — PERMANENT INCAPACITY TO PERFORM ESSENTIAL DUTIES

Under Government Code § 21156, disability retirement is warranted when a member is incapacitated for the performance of essential job duties. My incapacities prevent safe and effective fulfillment of functions intrinsic to the Correctional Sergeant role.

### V. MEDICAL FINDINGS SUPPORTING PERMANENT INCAPACITY

Dr. Geiger's QME documents multiple orthopedic impairments that interfere with essential job functions:

- Lumbar spine degenerative disc disease
- Bilateral knee degeneration with chronic pain
- Right hand pain with grip loss
- Chronic foot degeneration with pain
- Chronic neck/trapezius pain limiting range of motion

### VI. SUPPLEMENTAL EVIDENCE OF PERMANENT INCAPACITY

I was declared Permanent and Stationary on December 30, 2022, confirming medical stability and lack of expected functional improvement. Additionally, a 60% Permanent Disability rating confirms substantial and lasting impairment, consistent with medical restrictions that interfere with essential job duties.

### VII. ACCOMMODATIONS CANNOT RESTORE ABILITY TO PERFORM ESSENTIAL DUTIES

No reasonable accommodation eliminates the need for rapid response, physical intervention, prolonged standing, walking, or lifting. Essential duties cannot be substituted with modified tasks without altering the job's nature.

### VIII. CONCLUSION & REQUEST

Based on evidence establishing permanent incapacity under Government Code §§ 21154

and 21156, I respectfully request reversal of the denial and approval of disability retirement, as I cannot safely perform essential duties of a Correctional Sergeant.

Sincerely,

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Kevin J. McNeal  
Former Correctional Sergeant, CDCR