

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Remy Black (Respondent) was employed as a Dentist for Respondent California City Correctional Facility, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of his employment, Respondent was a state safety member of CalPERS and applied for industrial disability retirement.

Respondent submitted an application for service pending industrial disability retirement on March 18, 2024, based on orthopedic conditions (neck, right wrist, and right shoulder). Respondent retired from service effective March 29, 2024, and has been receiving benefits since that time.

As part of CalPERS' review of Respondent's medical condition, John D. Kaufman, M.D., a board-certified orthopedic surgeon, performed an Independent Medical Examination (IME). Dr. Kaufman, M.D. interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Kaufman, M.D. opined that Respondent's orthopedic conditions were not disabling.

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 February 9, 2026. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing.

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, Dr. Kaufman, M.D. testified in a manner consistent with his examination of Respondent and the IME report. Dr. Kaufman, M.D.'s medical opinions were well-supported and compelling because they were based on clinical testing, such as x-rays and MRIs. Dr. Kaufman's findings were further supported by his physical examination, i.e., lack of atrophy, redness, and swelling. Furthermore, Dr. Kaufman's medical

opinions were consistent with the December 20, 2023, EMG/NCS, which showed normal nerve and muscle function. Therefore, Dr. Kaufman concluded that Respondent is not substantially incapacitated from performing his usual and customary duties as a dentist.

Respondent testified on his own behalf that he is unable to perform his usual customary duties as a dentist for Respondent CDCR because he cannot perform necessary fine motor manipulations due to repetitive use of his right shoulder, arm, wrist, and hand from the many years of practicing dentistry.

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 carry his burden of proof. The only medical evidence that he presented was admitted solely as administrative hearsay evidence. This evidence is insufficient to support the finding that Respondent was incapacitated for the performance of his duties as a dentist. On the other hand, Dr. Kaufman's opinion and testimony presented by CalPERS that Respondent was not substantially incapacitated from the performance of his usual and customary duties as a dentist was well-supported and more convincing than Respondent's limited medical evidence.

The ALJ concluded that Respondent is not eligible for industrial disability retirement.

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 "and uncertain" from the quote of Government Code section 20026 on page 11, paragraph 2 be deleted and the quotation marks in the first sentence of paragraph 4, page 12, be deleted.

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

April 14, 2026

---

Preet Kaur  
Senior Attorney