

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Sherry R. Frazier (Respondent) was last employed as a Case Records Technician for Pleasant Valley State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of this employment, Respondent is a state safety member of CalPERS.

On June 24, 2024, Respondent applied for industrial disability retirement based on her alleged neuropsychological conditions (cognitive, encephalopathy, and sleeping disorder), pulmonological conditions (pulmonary issues and post-COVID-19 syndrome), and otolaryngological conditions (balance and dizziness).

As part of CalPERS' review of Respondent's medical conditions, Geoffrey Smith, M.D., a board-certified otolaryngologist, Syed Omar Tirmizi, M.D., a board certified pulmonologist, and Dominique Kinney, Ph.D., a board certified clinical neuropsychologist, each performed an Independent Medical Examination (IME). Each doctor interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, reviewed her medical records, and prepared a report of their findings upon examination.

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 her position.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. A hearing was held on February 5, 2026. Respondent represented herself at the hearing. 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 her 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.

Dr. Smith conducted an IME to evaluate Respondent's otolaryngological conditions on October 7, 2024. At the hearing, Dr. Smith testified in a manner consistent with his examination of Respondent and his IME report.

Dr. Smith testified that his examination of Respondent's face, head, eyes, nose, ears, oropharynx, teeth, larynx, and neck appeared normal. He performed audiometric testing, which revealed mild hearing loss in the right ear and 13-percent high-frequency hearing loss in the left ear caused by noise exposure. Dr. Smith also performed impedance testing, which ruled out dizziness caused by fluid in the inner ear.

Dr. Smith opined that Respondent did not have an otolaryngological condition (balance, dizziness) rising to the level of substantial incapacity to perform her usual and customary duties as a Case Records Technician. Respondent's physical examination was entirely normal, except for some hearing loss in the left ear that would not impair her ability to perform the usual and customary duties of a Case Records Technician.

Dr. Tirmizi conducted an IME to evaluate Respondent's pulmonological conditions on October 2, 2024. During the examination, Respondent identified her chief respiratory complaints as mild shortness of breath and fatigue resulting from her January 2022 COVID-19 infection. She reported that she was tired most of the time but able to perform activities of daily living such as laundry, cooking, bathing, and cleaning. Dr. Tirmizi noted that Respondent's medical records showed her breathing had improved, but she continued to use corticosteroid and rescue inhalers.

Dr. Tirmizi's physical examination of Respondent was normal. Among other normal findings, Respondent's chest and lungs revealed clear, normal, and symmetrical breath sounds with normal expansion. Her cardiovascular examination revealed normal sounds, with no murmurs, rubs, or clicks. Her gait was normal, with no ataxia. Dr. Tirmizi opined that Respondent did not have a pulmonary or internal medical condition rising to the level of substantial incapacity to perform the usual and customary duties as a Case Records Technician.

Dr. Kinney conducted an IME to evaluate Respondent's neuropsychological condition on September 27, 2024. Respondent identified her chief neuropsychological complaints as difficulties with memory, learning, attention, concentration, language (word finding), comprehension, executive functioning, depression, and anxiety. She reported experiencing these difficulties daily and attributed them to a January 2022 COVID-19 infection. She stated that she could not perform work of any kind due to her cognitive problems.

On examination, Respondent was alert and oriented, with clear and coherent thinking and normal thought content. She maintained normal behavior. She became tearful at some points but was able to compose herself and continue the examination. She was able to understand and remember test instructions, provide thoughtful responses to questions, and persist with cognitive tasks for 1.5 hours at a time without a break. Her speech was coherent, fluent, and goal-directed, with normal prosody, volume, and articulation and no signs of paraphasia or circumlocution.

Cognitive testing yielded exceptionally low performance scores, however, Dr. Kinney concluded that the scores were invalid due to “overwhelming objective evidence” of malingering. Multiple validity tests showed the results were “unequivocally invalid,” Respondent gave “very unusual” responses associated with noncredible reporting, and Respondent’s test results were “markedly inconsistent” with her reported capabilities and mental-status examination findings. Dr. Kinney noted that Respondent’s performance on cognitive tasks, especially memory, was consistent with severe traumatic brain injuries, dementia, and strokes. Respondent’s scores were so low that they indicated a need for supervised care.

Dr. Kinney concluded that Respondent did not have a neuropsychological or psychological impairment, rising to the level of substantial incapacity to perform the usual and customary duties of a Case Records Technician. The evidence did not establish a neuropsychological impairment; to the contrary, magnetic resonance imaging (MRI) in 2023 and 2024 was normal and devoid of signs one would expect to see from COVID-19-related impairments, such as brain atrophy, shrinking of brain cells, and poor oxygen.

Respondent testified on her own behalf and produced documentary evidence to support her appeal. Respondent started working for Respondent CDCR as an Office Assistant at Avenal State Prison in 2015. She testified that she was a quick learner who sought increased responsibility and worked her way up the ranks. In February 2022, Respondent CDCR promoted her to a Case Records Technician position at Pleasant Valley State Prison.

In January 2022, Respondent’s last month at Avenal State Prison, she contracted COVID-19 at work; she tested positive on or about January 18, 2022, after experiencing headaches and joint pain.

In February 2022, Respondent started working full-time as a Case Records Technician at Pleasant Valley State Prison. Respondent testified that the transition to her new job was difficult, due to her ongoing COVID-19 symptoms. Respondent last worked at Respondent CDCR in October 2022.

Respondent presented a pre-printed, fill-in-the-blank “work status” form, signed by her workers compensation physician, Dr. Sanjay J. Chauhan, to support her appeal. The form states that Respondent was “permanently totally disabled” as of May 6, 2025.

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 she was substantially incapacitated from the performance of her usual job duties as a Case Records Technician when she applied for industrial disability retirement. Most notably, she did not present competent medical opinion evidence supporting her allegations of substantial incapacity.

Respondent submitted a single medical record, a fill-in-the-blank form from her physician, Dr. Chauhan, stating that she became “permanently totally disabled” on May 6, 2025. However, Dr. Chauhan did not identify Respondent’s allegedly disabling conditions or functional limitations. The form did not reference any supporting medical findings or otherwise explain the basis for Dr. Chauhan’s conclusion.

CalPERS, on the other hand, presented competent medical opinions from three medical experts, each specializing in an area of medicine corresponding with Respondent’s conditions for which she alleged substantial incapacity, namely, otolaryngology, pulmonology, and neuropsychology. All three medical experts opined that Respondent was not substantially incapacitated from performing her usual and customary duties as a Case Records Technician. The medical experts based their opinions on his or her own comprehensive examination and review of Respondent’s medical records and usual and customary job duties.

The ALJ concluded that Respondent is not eligible for industrial disability retirement. For all the above reasons, staff argues that the Proposed Decision should be adopted by the Board.

April 14, 2026

Austa Wakily
Senior Attorney