

ATTACHMENT B

Staff Argument

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

Dario Godinez (Respondent) was employed as a Plasterer for the Housing Authority of the City of Los Angeles (Respondent Authority). By virtue of his employment, Respondent is a local miscellaneous member of CalPERS. On or about April 4, 2024, Respondent applied for Service Retirement (SR) pending Disability Retirement (DR) based on orthopedic conditions (left shoulder and right knee). He has been receiving his SR allowance since July 1, 2023.

As part of CalPERS' review of Respondent's medical conditions, Pavel Moldavskiy, M.D., a board-certified orthopedic surgeon, performed an Independent Medical Examination (IME) concerning Respondent's orthopedic conditions. Dr. Moldavskiy examined Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Moldavskiy opined that Respondent was not substantially incapacitated from the performance of his usual and customary duties as a Plasterer with Respondent Authority.

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. Further, 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 the medical documentation and the IME report, CalPERS determined that Respondent was not substantially incapacitated from performing his duties as a Plasterer with Respondent Authority because of his left shoulder and right knee conditions. CalPERS notified Respondent of this by letter dated October 22, 2024. Respondent subsequently added an orthopedic left knee condition to his DR Application. CalPERS provided additional medical records to Dr. Moldavskiy regarding Respondent's left knee condition. Dr. Moldavskiy issued a Supplemental Report on November 27, 2024, opining that Respondent's left knee condition also does not substantially incapacitate him from performing his usual and customary duties. CalPERS notified Respondent of this by letter dated December 24, 2024.

Respondent appealed CalPERS' decision and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on March 5, 2026. Respondent represented himself at the hearing. Respondent Authority did not appear at the hearing, and a default was taken as to Respondent Authority 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 the hearing, Respondent testified on his own behalf with the assistance of an English translator, stating that the pain and lack of strength he suffers in his left shoulder and knees prevents him from working as a Plasterer and that this is further proven by the Social Security Administration's finding that he was disabled as of February 3, 2021.

Respondent produced medical records from Shaun Chandran, M.D. and Concentra Health Services. Neither Dr. Chandran nor a representative from Concentra Health Services testified at the hearing.

A note from April 15, 2022, from Concentra Health Services confirmed that Respondent underwent a right knee arthroscopy, partial meniscectomy, and a left shoulder manipulation after suffering his injuries. The note also states that Respondent is performing his usual job duties without difficulty with the work restrictions in place: no lifting more than five pounds, no prolonged standing or walking more than 10 feet, no pushing or pulling more than five pounds, no reaching above the shoulders, and no kneeling or squatting.

Dr. Chandran's records also show that he performed a right knee arthroscopy and partial meniscectomy on Respondent. In July 2023, Dr. Chandran diagnosed Respondent with mild left shoulder osteoarthritis with a circumferential tear of the labrum and subacromial impingement but noted that Respondent could perform his usual and customary duties at work. Respondent later underwent an arthroscopic left biceps tenodesis and subacromial decompression on his left shoulder in October 2023. Six months later, Dr. Chandran felt that Respondent had improved range of motion and less pain. However, in November 2024, Respondent complained of pain in his left knee, and Dr. Chandran diagnosed him with arthritis and medial and lateral meniscal tears. On April 9, 2024, and July 25, 2024, Dr. Chandran stated in a Physician's Report that Respondent's shoulder and knee injuries were work-related, and that Respondent is "currently, substantially incapacitated from performance of the usual duties of the position for their current employer." There was no explanation from Dr. Chandran as to why he came to that conclusion, and there are no records to substantiate that opinion.

Dr. Moldavskiy testified at the hearing in a manner consistent with his examination of Respondent and the IME reports. Dr. Moldavskiy observed the same range of motion in the left and right shoulders in extension and adduction, and he found Respondent's left and right shoulders to be equally as strong and within normal limits. Dr. Moldavskiy found that performing the duties of Respondent's job might be more difficult for him, but not impossible. He did not consider the range of motion or grip strength to be substantially incapacitating.

With respect to Respondent's knees, Dr. Moldavskiy found no gross atrophy or deformity. He noted that Respondent had tenderness over the right knee's medial joint. Dr. Moldavskiy observed that the range of motion for Respondent's knees was normal. As with Respondent's right shoulder, Dr. Moldavskiy found that the condition of

Respondent's knees could make his job as a Plasterer more difficult but was not substantially incapacitating.

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 prove by competent medical evidence that he was substantially incapacitated from the performance of his usual job duties at the time he applied for DR. Therefore, Respondent does not qualify for DR on the basis of his orthopedic conditions and CalPERS' denial of his DR application is correct.

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 replacing the word "disability" with the word "incapacity" on page 4, paragraph 4 and page 9, paragraph 19. Further, to correct typographical errors in the Proposed Decision, staff recommends: (1) replacing the word "hang" with the word "hand" on page 5, paragraph 10; (2) replacing the word "next" with the word "neck" on page 5, paragraph 11; and (3) inserting the word "not" before the word "preclude" on page 10, paragraph 21.

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

June 17, 2026

Sean Stowers
Senior Attorney