

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Brad E. Thompson (Respondent) was a Correctional Officer for Respondent Avenal State Prison, California Department of Corrections and Rehabilitations (CDCR). By virtue of this employment, Respondent was a state safety member of CalPERS.

On January 2, 2023, Respondent applied for industrial disability retirement based on an orthopedic condition (right knee).

As part of CalPERS' review of Respondent's medical condition, Pavel Moldavskiy, M.D., a board-certified orthopedic surgeon, performed an Independent Medical Examination (IME). Dr. Moldavskiy interviewed 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 performing his job duties as a Correctional Officer.

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 that is expected to last at least twelve consecutive months or 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. CalPERS notified Respondent of its determination by letter dated September 16, 2024.

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 March 25, 2026. Respondent represented himself at the hearing. CDCR did not appear at the hearing and a default was taken as to 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.

Respondent presented testimony from his treating physician, Boyd Johnson, D.O. Dr. Johnson testified that he has been Respondent's physician since April 2019. He has practiced as a Family Medicine Physician for 22 years and has assisted patients in workers' compensation matters for the past 15 years.

At the hearing, Dr. Johnson testified on the history of Respondent's injury. Dr. Johnson testified that Respondent was unable to bear weight on his right leg when he was first examined in April 2019. Dr. Johnson directed Respondent to use crutches to keep

weight off his right leg. Additionally, he prescribed oral pain medication and Voltaren gel to alleviate Respondent's pain.

Dr. Johnson testified that Respondent's initial x-rays did not show a fracture. He referred Respondent for an MRI, which showed an impact fracture and a medial meniscus tear on Respondent's right knee. Dr. Johnson explained that meniscus tears vary in severity. Small tears may cause moderate pain during walking. Large tears can cause severe pain and swelling. Dr. Johnson further explained that there are various treatment options for meniscal tears. Meniscus tears will often heal on their own with rest. Additionally, a torn meniscus can be sewn, trimmed, or cut out to aid in proper healing.

Dr. Johnson explained that an Osteochondral Autograft Transfer System (OATS) procedure is a viable treatment option for meniscus tears. This procedure is performed by taking a patient's cartilage from a non-weight bearing area and placing it at the impaction site to promote healing.

Dr. Johnson subsequently referred Respondent to an orthopedic surgeon after his injury did not heal as expected. Respondent was seen by Orthopedic Surgeon Jerome Dunklin, M.D., for an osteochondral drilling procedure in January 2020. Dr. Johnson explained that this procedure is performed by drilling holes in the bones near damaged cartilage. This procedure is intended to aid healing by promoting blood flow near damaged cartilage.

Dr. Johnson reviewed Respondent's job duty statement and completed a return-to-work report for him dated October 27, 2022. In the report, Dr. Johnson indicated that Respondent could lift ten pounds and walk and stand for two to three hours per day; however, Respondent was unable to crawl, kneel, squat, climb, or run. At the hearing, Dr. Johnson testified that Respondent would be unable to run in response to an alarm, defend himself against inmates, and detain inmates as needed. He opined that Respondent may be able to perform some of these functions occasionally but would be unable to do so in a "competitive work environment" where employees are expected to repeatedly perform these physical tasks.

Dr. Johnson's most recent examination of Respondent was March 2026. At this examination, Respondent's right knee was not swollen and his ligaments were intact. However, Respondent's right knee strength was poor. Respondent told Dr. Johnson that it was painful for him to bend his knee, kneel, squat, and walk. Dr. Johnson's opinion regarding Respondent's limitations was unchanged following his most recent examination.

Dr. Johnson testified that he has evaluated patients' limitations in approximately ten to fifteen CalPERS matters. However, he was unfamiliar with the substantial incapacity standard and did not articulate whether Respondent's injuries were substantially incapacitating.

At the hearing, CalPERS presented the testimony of Dr. Moldavskiy, the physician retained by CalPERS to evaluate Respondent. Dr. Moldavskiy testified in a manner

consistent with his examination of Respondent and his IME report. Dr. Moldavskiy testified that Respondent's right knee showed no deformity and was anatomically aligned. Dr. Moldavskiy observed healed portal sites from a surgical procedure above Respondent's right knee. Respondent's right thigh muscle measured three centimeters smaller than his left thigh muscle, indicating muscle atrophy. Dr. Moldavskiy attributed the difference in muscle mass to Respondent favoring his left leg over his right. Respondent experienced pain when Dr. Moldavskiy pressed on the inside of his right knee.

Dr. Moldavskiy examined the range of motion in Respondent's knees. The flexion range of Respondent's right knee was 114 degrees, which is less than the normal range of 130 degrees. Dr. Moldavskiy opined that this reduced range of motion would make squatting movements difficult for Respondent, but not impossible. This reduced range of motion would not prevent Respondent from being able to bend, kneel, or stoop.

Dr. Moldavskiy summarized portions of Respondent's medical records. An MRI from June 27, 2019, showed that Respondent had a small medial femoral impaction fracture with an associated medial meniscal tear. On January 23, 2020, Dr. Jerome Dunklin performed a partial medial meniscectomy and debridement of scar tissue. Dr. Moldavskiy explained that this procedure was done to "clean up" and remove damaged portions of Respondent's meniscus. Dr. Dunklin's medical records revealed that he discussed the option of performing an osteochondral drilling procedure with Respondent. However, Dr. Moldavskiy did not receive records showing that Dr. Dunklin completed this procedure.

Respondent's records further showed that he completed a qualified medical evaluation with Payam Moazzaz, M.D., in a workers' compensation matter. Dr. Moazzaz recommended that Respondent undergo an OATS procedure to treat the impaction fracture in his right knee femoral condyle. Dr. Moldavskiy testified that the OATS procedure alleviates pain for approximately 70 percent of participants aged 50 and older. He opined that Respondent would be a good candidate for this procedure. He further opined that osteochondral drilling would be a viable alternative treatment for Respondent. Respondent's medical records indicate that he declined to undergo the OATS procedure.

Based upon review of Respondent's medical records and his examination, Dr. Moldavskiy opined that Respondent was not substantially incapacitated from performing his duties as a Correctional Officer based on his right knee condition. Dr. Moldavskiy explained that Respondent's injury was "relatively minor" and would make performing certain duties more difficult, but not impossible. Additionally, he found that Respondent was not substantially incapacitated because he refused reasonable treatment, *i.e.*, OATS procedure or osteochondral drilling, for his injuries

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ noted that the undisputed evidence established that Respondent injured his right knee while working at CDCR and that he experiences ongoing pain resulting from this injury. While Drs. Johnson and Moldavskiy

presented conflicting opinions regarding whether Respondent is substantially incapacitated and unable to perform his job duties, the ALJ found Dr. Moldavskiy's opinion more persuasive. The ALJ found Dr. Moldavskiy's qualifications and experience made him more qualified to opine on Respondent's orthopedic injury. Further, Dr. Moldavskiy provided more detailed testimony regarding his examination of Respondent. His examination supported his conclusion that Respondent's injury was minor and not substantially incapacitating.

The ALJ found that Dr. Johnson did not apply or demonstrate an understanding of the substantial incapacity standard used in CalPERS industrial disability retirement matters. In contrast, Dr. Moldavskiy assessed Respondent's ability to perform his job duties under the applicable substantial incapacity standard. As such, the ALJ found Dr. Moldavskiy's opinion to be more competent and reliable than Dr. Johnson's.

The ALJ further held that Respondent's unreasonable refusal to undergo further treatment to remedy his injury prevents a determination that his injuries are permanently incapacitating. (See *Reynolds v. City of San Carlos* (1981) 126 Cal.App.3d 208, 216 [Disability retirement benefits may be denied to an applicant who unreasonably refuses remedial treatment.]) Competent medical opinion established that the OATS procedure has a high probability of alleviating the impacts of Respondent's injury. Although Respondent believes that this procedure has a low probability of success, he offered no competent medical evidence to support this conclusion.

The ALJ concluded that a preponderance of the evidence did not establish that Respondent's right knee injury rendered him substantially incapacitated and unable to perform his usual duties when he applied for industrial disability retirement.

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

June 17, 2026

Austa Wakily
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