

**ATTACHMENT B**

**Staff Argument**

## **STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION**

Edgardo Silva-Valdovinos (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated May 8, 2026. For reasons discussed below, staff argues that the Board should deny the Petition and uphold its decision.

Respondent was employed by the California Department of Transportation (Respondent Caltrans) as an Electrician II. By virtue of his employment, Respondent is a state miscellaneous member of CalPERS. On or about August 25, 2021, Respondent submitted an application for disability retirement on the basis of orthopedic conditions (lumbar spine and right shoulder). The application was approved, and he retired for disability with an effective date of September 25, 2021.

By letter dated December 26, 2023, CalPERS notified Respondent that CalPERS conducts reexaminations of persons on disability retirement. The letter also informed Respondent that he would be reevaluated for purposes of determining whether he remains substantially incapacitated from his employment and is entitled to continue to receive a disability retirement.

To remain eligible for disability retirement, competent medical evidence must show that the individual remains substantially incapacitated from performing the usual and customary duties of his or her former 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.

As part of CalPERS' review of Respondent's medical condition, Respondent was sent for an Independent Medical Examination (IME) to Nasser Heyrani, M.D., a board-certified Orthopedic Surgeon. Dr. Heyrani examined Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed medical records. Dr. Heyrani found no objective orthopedic impairment that would render Respondent substantially incapacitated from performing his job duties as an Electrician II for Respondent Caltrans.

After reviewing all of the medical documentation and the IME report, CalPERS determined that Respondent was no longer substantially incapacitated, no longer eligible for disability retirement, and should therefore be reinstated to his former position as an Electrician II for Respondent Caltrans.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). The hearing was held on April 9, 2026. Respondent represented himself at the hearing.

Respondent Caltrans did not appear at the hearing and a default was taken as to Respondent Caltrans 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, Dr. Heyrani testified in a manner consistent with his examination of Respondent and the IME report. More specifically, Dr. Heyrani testified that there has been improvement in mobility and pain in Respondent's right shoulder since 2021. He observed that an MRI showed no tear or substantial abnormality that would prevent lifting. Upon examination of Respondent's lumbar spine, again he found improvement since 2021, noting normal alignment, range of motion and bilateral reflexes. Dr. Heyrani's medical opinion is that Respondent is not substantially incapacitated and can perform his usual job duties as an Electrician II for Respondent Caltrans.

Respondent testified on his own behalf. He stated that Dr. Heyrani's examination was 10 minutes long, and that this was, in Respondent's opinion, not long enough to get a full understanding of his incapacitating conditions. Respondent further testified that, while he can perform some of the tasks required in his job duties, he will suffer the next day, making repeated full-time work unsustainable. He stated the pain is not just in his right shoulder and lower back but rather a whole-body persistent pain that sometimes ranges from a level of seven to ten. He claims he cannot do the work required of him in his position as an Electrician II for Respondent Caltrans without restrictions, especially overhead lifting.

Respondent also called Susana Silva, his wife, to testify on his behalf. Ms. Silva stated that she witnesses her husband's chronic, ongoing pain and that it disrupts their household functionality. Ms. Silva testified that she is carrying the bulk of the household duties and working to financially sustain the household. She has noticed that Respondent experiences depression and anxiety along with severe physical limitations and pain.

Respondent introduced a work status report into evidence from a doctor he sees related to a workers' compensation claim. That report states that in April 2026, Respondent was authorized to "return to work with modified duty."

The ALJ found that the only competent medical evidence was presented by Dr. Heyrani, who established that Respondent is no longer substantially incapacitated from performing his duties as an Electrician II for Respondent Caltrans. He also found that the work status report offered by Respondent supports Dr. Heyrani's findings that Respondent can return to work.

After considering all the evidence introduced, as well as arguments by the parties at the hearing, the ALJ denied Respondent's appeal. The ALJ found that Respondent is no

longer substantially incapacitated from performing his job duties. Therefore, CalPERS has met its burden, and Respondent can be reinstated to his position as an Electrician II for Respondent Caltrans.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the June 17, 2026, meeting was well reasoned and based on the credible evidence presented at hearing. Therefore, staff argues that the Board should deny the Petition for Reconsideration and uphold its decision.

July 15, 2026

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