

ATTACHMENT B

STAFF'S ARGUMENT

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

Joven B. Aromin (Respondent) was employed as a Registered Nurse for California Medical Facility, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of his employment with Respondent CDCR, Respondent was a state safety member of CalPERS. On September 13, 2023, Respondent submitted an Application for Service Retirement Pending Industrial Disability Retirement (SR pending IDR) based on orthopedic conditions (right knee and left shoulder). Respondent retired for service effective July 2, 2023, and has been receiving service retirement benefits as of that date.

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.

As part of CalPERS' review of Respondent's medical condition, Nasser Heyrani, M.D., a board-certified orthopedic surgeon, performed an Independent Medical Examination (IME). Dr. Heyrani interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Heyrani opined that Respondent was not substantially incapacitated for the performance of his usual and customary duties as a Registered Nurse.

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 (OAH). A hearing was held on July 13, 2026. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing despite receiving timely and proper notice, and a default was taken as to Respondent CDCR only, under Government Code section 11520, subdivision (a).

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, a CalPERS Investigator testified that she conducted online surveillance of Respondent by reviewing content posted on his and his wife's social media accounts. She limited her search to the period after Respondent's April 2020 injury through October 2023 (approximately one month after he filed his application for SR pending

IDR). Videos posted on Respondent's and his wife's accounts showed him engaging in strenuous activities, including kayaking, climbing stairs, riding bicycles, hiking, riding ATVs, and walking on rugged and uneven terrain. The social media posts and an investigation report summarizing their contents were admitted into evidence.

At the hearing, Dr. Heyrani testified consistently with his examination of Respondent and his IME reports. He stated that Respondent demonstrated only a slight reduction in strength and range of motion in both his left shoulder and right knee. Objective findings on examination revealed only clinically insignificant joint degeneration, a common age-related change. In short, the physical examination did not reveal significant abnormalities or major pathology. Dr. Heyrani further testified that Respondent's subjective complaints of pain and physical limitations were inconsistent with both the objective examination findings and the sub rosa evidence of Respondent engaging in strenuous activities. Accordingly, Dr. Heyrani concluded that Respondent was not substantially incapacitated from performing his usual job duties due to any orthopedic condition.

Respondent testified on his own behalf that he has not worked in any capacity since he was placed on leave by CDCR in May 2020. On cross-examination, however, he admitted that he operated a multi-level marketing business promoting a travel company until 2025 and operated a solar company involving door-to-door sales until 2023. He also testified that he renewed his RN license in order to assist in opening a medical spa with his daughter. Respondent claimed that many of the photographs and videos on social media were staged and did not accurately reflect his physical limitations.

Respondent did not call any other witnesses or medical professionals to support his position. He sought to introduce the medical records previously reviewed by Dr. Heyrani in connection with the IME or supplemental IME report. Those records were admitted as administrative hearsay. Hearsay evidence may be used to supplement or explain other evidence, but it is not sufficient in itself to support a finding.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ reasoned that Respondent did not meet his burden to present competent, objective medical evidence to establish that he was permanently disabled or substantially incapacitated from performance of his usual duties as a Registered Nurse at the time he filed his SR pending IDR application. Instead, the competent medical evidence established that Respondent's orthopedic conditions did not render him incapacitated to perform his usual job duties. The ALJ further found Respondent's claims of physical limitations unpersuasive in light of the social media evidence.

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 "workers compensation" be replaced with "workers' compensation" on page 4, paragraph 7; page 12, paragraph 20; and page 21, paragraph 6; and that "felt like at" be changed to "felt like a" on page 18, paragraph 37.

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

September 16, 2026

Bryan Delgado
Senior Attorney