ATTACHMENT B

Staff Argument

Attachment B

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

Jess A. Salcedo (Respondent) was employed as a Correctional Lieutenant for Avenal State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of his employment, Respondent is a state safety member of CalPERS. On or about October 10, 2011, Respondent submitted an application for service retirement (SR) with an effective date of December 30, 2011. He has been receiving SR benefits since that time.

On or about August 7, 2023, Respondent applied for industrial disability retirement (IDR) based on orthopedic conditions (bilateral shoulders), a psychological condition (post-traumatic stress disorder), and an otolaryngological condition (loss of hearing). A cardiology condition (heart) was later added to Respondent's IDR claim. CalPERS canceled Respondent's application as to the psychological and otolaryngological conditions for lack of adequate medical documentation.

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 conditions, 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 Correctional Lieutenant with Respondent CDCR.

CalPERS also requested that Respondent see James M. Schmitz, M.D., a board-certified internist with a subspecialty in cardiovascular diseases. Dr. Schmitz performed an Independent Medical Examination (IME) concerning Respondent's cardiologic condition. Dr. Schmitz examined Respondent, reviewed his work history and job descriptions, obtained a history of his past and present conditions, and reviewed his medical records. Dr. Schmitz also opined that Respondent was not substantially incapacitated from the performance of his usual and customary duties as a Correctional Lieutenant with Respondent CDCR.

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 reports regarding Respondent's claimed disabilities, CalPERS determined that Respondent was not substantially incapacitated from performing his duties as a Correctional Lieutenant with

Respondent CDCR because of his cardiological condition (heart) and orthopedic (bilateral shoulders) condition. CalPERS notified Respondent of its determination by letter dated March 28, 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 September 3, 2026. Respondent represented himself 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 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 testified on his own behalf. He explained that his position as a Correctional Lieutenant required him to respond to emergency alarms which included directing co-workers and taking command. If necessary, he physically restrained inmates. Respondent admitted that he was never "medically removed" from his position as a Correctional Lieutenant by a doctor. He chose to service retire as a precaution due to his disabilities. Respondent testified that he believes he could have become a liability to his colleagues.

Respondent produced Physician's Reports on Disability signed by Peter T. Simonian, M.D. and Marshall Lewis, M.D. However, he did not produce any evidence that supported the respective reports and neither of the doctors testified at hearing.

Dr. Simonian's Report indicated that he believes Respondent is substantially incapacitated. His opinion was based on images taken more than nine years after Respondent's claimed incapacity began and a physical examination on or about the same time. Dr. Simonian did not list any physical restrictions in his Report.

Dr. Lewis's Report indicated that he also believes Respondent is substantially incapacitated. His opinion was based on Respondent's subjective complaints. However, there were no objective findings from his examination of Respondent. He also reviewed images from a month after Respondent's claimed disabilities started. In his report, Dr. Lewis claimed that Respondent does not have any restrictions or limitations, nor did he list any job duties that Respondent would not be able to perform as a Correctional Lieutenant.

Dr. Moldavskiy testified at the hearing in a manner consistent with his examination of Respondent and his IME report. In Dr. Moldavskiy's examination of Respondent's shoulders, he saw no obvious deformities or misalignment, and all surgical sites were well-healed. Dr. Moldavskiy did observe a reduction in forward flexion, extension, and

internal and external rotation, bilaterally. Bilateral strength was normal, but grip strength showed some weakness on both the left and right. There were no signs of atrophy. Dr. Moldavskiy concluded that Respondent has some impairment in his shoulders that may make some tasks more difficult but that he is not substantially incapacitated from doing any of his job duties. Therefore, Dr. Moldavskiy opined that Respondent is not substantially incapacitated from performing his duties as a Correctional Lieutenant with Respondent CDCR.

Dr. Schmitz also testified at the hearing in a manner consistent with his examination of Respondent and his IME report. During Respondent's examination by Dr. Schmitz, Respondent's blood pressure registered as high but within normal limits. Dr. Schmitz also reviewed an echocardiogram from December 2023. Dr. Schmitz's review of the echocardiogram and a stress test from 2012 showed no symptoms related to Respondent's cardiovascular system. Dr. Schmitz added that Respondent has been diagnosed with hypertension (high blood pressure), and the high reading could easily have been brought on by the medical environment and the anxiety that can be associated with such a setting. Dr. Schmitz concluded that Respondent does not have a cardiological condition that substantially incapacitates him from performing his duties as a Correctional Lieutenant with Respondent CDCR.

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 IDR. Therefore, Respondent does not qualify for IDR on the basis of his orthopedic or cardiovascular conditions and CalPERS' denial of his IDR application was 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 correct a typographical error, staff recommends that the word "respondent's" be replaced with the word "respondent" on page 17, paragraph 54 of the Proposed Decision.

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

November 18, 2026

Sean Stowers
Senior Attorney