

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Paul Negrón (Respondent) worked as a Correctional Officer for Respondent California Health Care Facility, Stockton, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of his employment Respondent was a state safety member of CalPERS.

Respondent filed an application for industrial disability retirement on September 23, 2019 based on orthopedic (right shoulder and left knee) conditions.

As part of CalPERS' review of Respondent's medical condition, Don T. Williams, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME.) Dr. Williams interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, reviewed his medical records and a surveillance DVD of Respondent. Dr. Williams opined that Respondent is not substantially incapacitated from performing his job duties as a Correctional Officer.

In order 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.

After reviewing all medical documentation and the IME report, 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 March 2, 2021. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing.

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. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing, Dr. Williams testified in a manner consistent with his examination of Respondent and the IME report. At the hearing, Dr. Williams explained that he reviewed three MRI scans of Respondent's left knee. The MRI from December 7, 2017, showed normal findings for the meniscus, anterior and posterior cruciate ligaments and collateral ligaments. There was questionable chondrosis of the trochlear notch but no

high grade chondrosis. Dr. Williams testified that the second and third MRIs showed slight fissuring of the patella and trochlea but were otherwise normal.

Dr. Williams also reviewed video footage provided by CalPERS. In the videos, Respondent walked smoothly without limping. He also observed Respondent playing pool at a billiards hall, bending over frequently. Dr. Williams noted in his report that while Respondent played pool, he was seen using both arms and with the right arm, he was seen reaching forward such that his arm was at 160 degrees and to 180 degrees flexion. Respondent was able to move his arm freely, touch his back and reach across the table. Dr. Williams also observed on the video, Respondent lifting and carrying items into his garage and loading boxes and items into a U-Haul van and his Grand Cherokee. Respondent was able to step up onto a stepladder while moving objects in his garage. He was able to get in and out of the vehicles without difficulty.

Dr. Williams opined that Respondent is not substantially incapacitated from the performance of his usual job duties as a Correctional Officer due to either his left knee or right shoulder conditions. Dr. Williams found that the objective evidence, including his examination, the mostly normal imaging studies and the video evidence did not correlate with Respondent's complaints and statement that he cannot do his regular job duties, including running.

Dr. Williams further opined that while Respondent might experience some pain with activities such as running, climbing stairs or engaging with inmates, he was able to do the job without restrictions.

Respondent testified on his own behalf that prior doctors had given him permanent work restrictions, and those restrictions were not accommodated by his employer, and so he applied for industrial disability retirement. Respondent did not present any medical evidence to refute the opinions of Dr. Williams.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Dr. Williams testified credibly as to his medical opinion that Respondent is not substantially incapacitated from the performance of his normal duties. Respondent did not present any medical evidence in support of his application or in opposition to the opinions of Dr. Williams. The ALJ concluded that Respondent did not meet his burden of establishing that he was substantially incapacitated from the performance of his usual duties as a Correctional Officer.

The ALJ concluded that Respondent is not eligible for industrial disability retirement.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends (1) inserting the word, "industrial" before the words, "disability retirement" on page four numbers 12 and 14; and (2) replacing the following sentence on page eight, paragraph 2, "The terms disability and incapacitated for the

performance of duty mean disability of permanent or extended and uncertain duration . . . on the basis of competent medical opinion. (Gov. Code, § 20026.)” with the sentence, “Disability” and “incapacity for performance of duty” as a basis of retirement mean disability of permanent and extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board...on the basis of competent medical opinion (Gov. Code section 20026.) in the Proposed Decision.

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

June 16, 2021

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Senior Attorney