

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Daniel L. Tercero (Respondent) applied for industrial disability retirement based on cardiac (heart and hypertension) conditions. By virtue of his employment as a Correctional Officer for Respondent Avenal State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

Respondent filed an application for service pending industrial disability retirement on November 19, 2019. He retired for service effective December 31, 2019, and has been receiving benefits since that time.

As part of CalPERS' review of Respondent's medical condition, Robert B. Weber, M.D., a board-certified Internist and Cardiologist, performed an Independent Medical Examination (IME). Dr. Weber interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Weber opined that Respondent is not substantially incapacitated to perform his usual job duties.

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 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 August 9, 2021. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing. The ALJ found that the matter could proceed as a default against Respondent CDCR, pursuant to 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.

At the hearing, Dr. Weber testified in a manner consistent with his examination of Respondent and the IME report. Dr. Weber's medical opinion is that Respondent's

cardiac condition improved following his heart attack and treatment, and it continues to improve. Therefore, Dr. Weber's competent medical opinion is that Respondent is not substantially incapacitated.

Respondent testified on his own behalf that he continues to experience symptoms from his heart condition and medications, and that his job as a Correctional Officer is stressful. Respondent did not call any physicians or other medical professionals to testify nor did he offer any documentary evidence to support his appeal.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent holds the burden of proof to show that he is disabled, and that Respondent failed to establish by a preponderance of the evidence that he is substantially incapacitated from performing the usual duties of a Correctional Officer at Avenal State Prison. He did not present competent medical evidence to establish he is substantially incapacitated. The ALJ found Dr. Weber's opinion was persuasive, supported by the medical records, and by his physical examination of Respondent.

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

November 17, 2021

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Helen L. Louie  
Staff Attorney