

**ATTACHMENT B**

**Staff Argument**

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

Susana Garcia Ayard (Respondent) applied for industrial disability retirement based on an orthopedic condition (neck) on December 28, 2021. By virtue of her employment as a Correctional Sergeant for California Men's Colony, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

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 her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Respondent had been in a single-car accident at work. Dr. Williams opined that Respondent had suffered only minor injuries from this incident, and the subsequent treatment she received was very successful. Dr. Williams testified that Respondent should have been able to return to work within one to two months after the incident.

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 of the medical documentation and the IME report, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of her position.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on March 28, 2024. Neither Respondent nor Respondent CDCR appeared at the hearing. Defaults were taken as to both parties pursuant to Government Code section 11520.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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. Williams testified in a manner consistent with his examination of Respondent and his IME report. Dr. Williams testified that Respondent demonstrated almost full range of motion in her neck, had normal reflexes, had stable cervical discs and had good grip strength. Dr. Williams' opinion is that Respondent had returned to

baseline functioning with no work preclusions. Therefore, Respondent is not substantially incapacitated from performing her duties as a Correctional Sergeant due to her claimed orthopedic condition.

After considering all of the evidence introduced, the ALJ denied Respondent's appeal. The ALJ found Dr. Williams' testimony persuasive, and that Respondent had failed to produce any evidence to the contrary. The burden of proof was on Respondent, and Respondent had clearly failed to meet her burden by failing to appear at the hearing and failing to introduce any evidence.

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

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 the name, "Susan Garcia Ayard" be replaced with the name, Susana Garcia Ayard in the caption of the Proposed Decision.

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

June 12, 2024

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MEHRON ASSADI  
Staff Attorney