

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Christopher J. Wall (Respondent) was employed as a Fire Apparatus Engineer at Respondent California Department of Forestry and Fire Protection (Respondent CalFIRE). By virtue of his employment, Respondent was a state safety member of CalPERS. On November 2, 2022, Respondent applied for industrial disability retirement based on an orthopedic condition (left knee).

As part of CalPERS' review of Respondent's medical condition, Harry A. Khasigian, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Khasigian interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Khasigian opined that Respondent was not substantially incapacitated from the performance of his usual job duties as a Fire Apparatus Engineer for Respondent CalFIRE.

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 May 15, 2024. Respondent represented himself at the hearing. Respondent CalFIRE did not appear at the hearing and a default was taken as to Respondent CalFIRE 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.

At the hearing, Dr. Khasigian testified in a manner consistent with his examination of Respondent and the IME report. Dr. Khasigian's medical opinion is that although Respondent had mild chondromalacia of the knee, which is a softening of the kneecap cartilage, Respondent had no significant defects or abnormalities. While Respondent may experience some pain, his condition was minor and would not

render Respondent substantially incapacitated. Dr. Khasigian also found that Respondent's subjective complaints of pain were inconsistent with the objective findings on examination. Dr. Khasigian concluded that Respondent was not substantially incapacitated for the performance of his usual job duties due to any orthopedic condition.

Respondent testified on his own behalf that he cannot perform his former job duties without pain or some difficulty. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted physical therapy notes, a training video showing one aspect of firefighter training and an email from a supervisor discussing his response during a fire as evidence. All these records were admitted as administrative hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but cannot be used 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 found that Respondent did not present competent, objective medical evidence to establish that he was substantially incapacitated from performance of his duties as a Fire Apparatus Engineer for Respondent CalFIRE at the time he filed his disability retirement application. The ALJ found that Dr. Khasigian's IME report was detailed and thorough, and his testimony was persuasive and well-supported by the evidence. The ALJ did not find Respondent's arguments persuasive.

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 word "industrial" be added prior to the word "disability" in the caption on page 1, paragraph 1 on page 2, paragraph 21 on page 8, paragraph 1 on page 9, paragraph 5 on page 10 and the Order on page 11.

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

July 17, 2024

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Bryan Delgado  
Attorney