

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION**

Jose E. Saucedo Lazalde (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated August 19, 2024. For reasons discussed below, staff argues the Board should deny the Petition and uphold its decision.

Respondent was employed as a Psychiatric Technician for California Department of State Hospitals Atascadero (Respondent DSH). Respondent applied for Industrial Disability Retirement on May 17, 2022, solely on the basis of orthopedic conditions (left elbow, fingers, hands and legs).

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 description, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Williams opined that Respondent was not substantially incapacitated from the performance of his usual job duties as a Psychiatric Technician for Respondent DSH.

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 on the basis of orthopedic conditions.

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 July 24, 2024. Respondent did not appear at the hearing, despite receiving timely and appropriate notice of the hearing. Therefore, a default was taken as to Respondent. A Personnel Officer for Respondent DSH appeared, but did not present testimonial or documentary evidence.

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. Williams testified in a manner consistent with his examination of Respondent and the IME report. For Respondent's left elbow, while Dr. Williams found a mild initial pop that subsequently disappeared, there was no detectible pathology on examination, no pain or muscle tenderness. As to Respondent's wrists, Dr. Williams found normal motion and excellent strength. In regard to Respondent's knees, there was no substantial pathology and both appeared normal on examination. Dr. Williams found Respondent's spine was normal upon examination. Dr. Williams concluded that Respondent was not substantially incapacitated for the performance of his usual and customary job duties due to any orthopedic condition.

A CalPERS Investigator testified that she had completed surveillance of Respondent for several days in October 2022. Surveillance showed Respondent picking up and carrying large cardboard boxes several times from his driveway into his garage, without any indication of pain. The surveillance DVD and summary of investigation report were admitted into evidence at the hearing. Dr. Williams testified that the surveillance video supported his opinion and contradicted statements made by Respondent of his claimed limitations.

After considering all the evidence introduced, as well as argument by CalPERS, the ALJ denied Respondent's appeal. The ALJ found that Respondent failed to meet his burden of establishing by a preponderance of the evidence that he is substantially incapacitated. The only medical evidence that was admitted established that Respondent was not substantially incapacitated. The ALJ found that Dr. Williams testified convincingly during the hearing. Although some medical records submitted to CalPERS showed that Respondent had medical conditions that affected his orthopedic condition, Dr. Williams was able to convincingly describe why they did not substantially incapacitate Respondent from performing his job duties. The ALJ also found that Respondent's claims of injury causing substantial incapacity were inconsistent with the demonstrative evidence of the surveillance video. Accordingly, the ALJ found that Respondent was not substantially incapacitated for the performance of his usual job duties as a Psychiatric Technician for Respondent DSH due to any orthopedic conditions (left elbow, fingers, hands and legs) when he applied for disability retirement.

The sole issue for determination at hearing was whether Respondent was substantially incapacitated from the performance of his usual and customary duties as a Psychiatric Technician for Respondent DSH due to orthopedic conditions. No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the September 18, 2024, meeting was well reasoned and based on the credible evidence presented at hearing.

Respondent's Petition for Reconsideration alleges a psychiatric condition ("head/psych"). Respondent's claimed psychiatric condition was not listed in his IDR application, never brought forth for evaluation, never made subject to CalPERS' determination, and never brought up at the hearing. If Respondent believes he is disabled on the basis of a psychiatric condition, then he needs to submit a new IDR application to CalPERS for a determination to be made on his newly claimed condition.

For all the foregoing reasons, staff argues that the Board should deny the Petition for Reconsideration.

November 20, 2024

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Attorney