

**ATTACHMENT B**

**Staff Argument**

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

Christopher Liddell (Respondent) was employed as a Crime Analyst for the Department of Justice (Respondent DOJ). By virtue of his employment, Respondent was a state safety member of CalPERS. He applied for service pending disability retirement (SR pending DR) based on a cardiological condition (chronic heart failure, dilated cardiomyopathy).

As part of CalPERS' review of Respondent's medical condition, Robert B. Weber, M.D., a board-certified Cardiologist and Internist, 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 was not substantially incapacitated from performing his job duties.

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 the 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 October 1, 2024. Respondent represented himself at the hearing. Respondent DOJ did not appear at the hearing, and a default was taken as to Respondent DOJ only pursuant to Government Code section 11520.

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.

Respondent did not testify at the hearing and did not provide any witness testimony. The only evidence Respondent submitted was a decision from the Social Security Administration finding that he was entitled to receive Social Security disability benefits based on claimed orthopedic, psychological, and cardiac conditions.

At the hearing, Dr. Weber testified in a manner consistent with his examination of Respondent and the IME reports. Dr. Weber testified that he diagnosed Respondent with hypertension controlled, cardiomyopathy with mildly reduced systolic function, atypical chest pain, obesity, obstructive sleep apnea, and asthma. He testified that Respondent's heart failure is "very well-controlled" due to an excellent, appropriate regimen. Dr. Weber found no objective signs of congestive heart failure. He found it significant that Respondent has been swimming, because his ability to swim further suggested that he does not suffer from congestive heart failure.

Dr. Weber testified that Respondent's ejection fraction, which is a measure of heart function, had improved to near normal. Dr. Weber concluded that Respondent does not have an actual and present cardiac condition that rises to the level of substantial incapacity to perform his usual job duties, and he is not substantially incapacitated. Dr. Weber believes that Respondent can perform the customary job duties of a Crime Analyst.

After considering all the evidence introduced, the ALJ denied Respondent's appeal. The ALJ found that Respondent did not prove by competent medical evidence that he was substantially incapacitated from performing his usual and customary duties as a Crime Analyst. The ALJ further found that Dr. Weber was credible and persuasive when opining that Respondent is not substantially incapacitated from performing those duties. Regarding Respondent's sole piece of evidence, the determination letter from the Social Security Administration, the ALJ found that it was not binding on CalPERS, based on a different standard of disability, and was based in part on orthopedic and psychological conditions which Respondent did not reference in his DR application. The ALJ concluded that Respondent is not eligible for 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 making the following changes:

1. removing the word "industrial" before the words "disability retirement" in the caption on page 1, and the Issue paragraph on page 2;
2. removing the word "industrial" before "member" and replacing it with the word "safety" in the Factual Findings section, paragraph one, page 2, and Legal Conclusions section, paragraph one, page 7;
3. removing the acronym "IDR" and replacing it with the acronym "DR" in the Issue paragraph, page 2; the Factual Findings section, paragraphs two, three, fourteen, and seventeen on pages 2, 6, and 7; the Legal Conclusions section, paragraph one, four, and five, on pages 7 and 9;
4. removing the reference to Government Code section "20048" in the Factual Findings section, paragraph one, page 2, and Legal Conclusions section, paragraph one, page 7;
5. removing the reference to Government Code section "20382" in the Legal Conclusions section paragraph one, page 7; and

6. adding the word “claiming” after the word “application” in the Factual Findings section, paragraph sixteen, page 6.

Subject to these proposed changes, staff recommends that the Board adopt as its own Decision the Proposed Decision dated October 18, 2024, as modified, concerning the appeal of Christopher L. Liddell.

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Staff Attorney