

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Amanda Jones (Respondent) applied for industrial disability retirement based on orthopedic (right upper extremity, neck, and low back) conditions. By virtue of her employment as a Correctional Officer for Respondent Pelican Bay State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS. Respondent filed an application for industrial disability retirement on November 2, 2019.

As part of CalPERS' review of Respondent's medical condition, Robert K. Henrichsen, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Henrichsen interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Henrichsen opined that Respondent merely suffered a sprain as a result of an on-the-job injury. Dr. Henrichsen noted that Respondent should have recovered within the first four to eight weeks following her injury and while Respondent complains of pain and inability to extend her right arm, no physician has been able to determine the exact cause of her symptoms. Dr. Henrichsen concluded that Respondent is fit to perform the job duties of a Correctional Officer.

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 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 June 24, 2021. Respondent represented herself 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 her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing, Dr. Henrichsen testified in a manner consistent with his examination of Respondent and the IME report. Dr. Henrichsen's medical opinion is Respondent is not restricted from the performance of her job duties. Therefore, Respondent is not substantially incapacitated.

Respondent testified on her own behalf that she suffers from back pain and cannot fully extend her right arm. Respondent also testified that she cannot perform a significant amount of the duties of a Corrections Officer. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted medical records from her treating physicians to support her appeal. These medical records were admitted as administrative hearsay pursuant to Gov. Code section 11513(d). Administrative hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but is not sufficient in itself to support a finding.

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 had the burden of proof to introduce sufficient competent medical evidence to support her industrial disability application, and that she did not meet her burden. The ALJ found Dr. Henrichsen's IME report to be detailed and thorough, and his testimony at hearing to be clear and comprehensive. Dr. Henrichsen's opinions were well supported by the evidence, including evaluations performed by several other medical professionals since December 2017. The ALJ found that "[w]hen all the evidence is considered, respondent failed to offer sufficient competent medical evidence to establish that, when she applied for industrial disability retirement, she was substantially and permanently incapacitated from performing the usual duties of a correctional officer for CDCR" persuasive.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." To avoid ambiguity, staff recommends that page 20, paragraph 3, of the Proposed Decision, which states "'Disability' and 'incapacity for performance of duty' as a basis of retirement, mean disability of permanent or extended and uncertain duration, as determined by the board . . . on the basis of competent medical opinion. (Gov. Code § 20026.)" be changed to state: "'Disability' and 'incapacity for performance of duty' as a basis of retirement, mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board . . . on the basis of competent medical opinion. (Gov Code § 20026.)"

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

November 17, 2021

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Preet Kaur  
Senior Attorney