

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Alan J. Soares (Respondent) applied for industrial disability retirement based on orthopedic (knees, hips, right hand, right elbow and neck) conditions. By virtue of his employment as a Maintenance Mechanic for Respondent Folsom State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

Respondent filed an application for service pending industrial disability retirement on May 16, 2013 and has been receiving benefits effective May 8, 2013. The industrial disability retirement portion of Respondent's application was canceled on August 8, 2013, because CalPERS did not receive all required documents to begin the disability application review process. On January 4, 2018, Respondent filed an application for industrial disability retirement and requested to change his service retirement to industrial disability retirement.

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 his work history and job descriptions, obtained a history of his past and present complaints, reviewed his medical records, and performed a comprehensive physical examination. Dr. Henrichsen opined that Respondent is not substantially incapacitated from performing his usual job duties.

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 and uncertain duration.<sup>1</sup>

After reviewing all medical documentation and the IME report, 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 7, 2021. Respondent represented himself 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 his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS

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<sup>1</sup> Government Code section 20026 in effect at the time of Respondent's May 16, 2013 application.

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 that Respondent's orthopedic conditions do not preclude him from performing his Maintenance Mechanic job duties. Dr. Henrichsen's medical opinion is that Respondent is not substantially incapacitated from performing his Maintenance Mechanic job duties.

Respondent testified on his own behalf about his orthopedic conditions and symptoms, his Maintenance Mechanic job duties, and his limitations. Respondent did not call any physicians or other medical professionals to testify. He did submit medical records from his Workers' Compensation physicians which were admitted as administrative hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but is not sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

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 and failed to present competent medical evidence to establish that he was substantially incapacitated from performance of his usual job duties as a Maintenance Mechanic. The ALJ found that the competent medical evidence presented by CalPERS through Dr. Henrichsen's testimony and IME report was persuasive. The ALJ concluded that Respondent is not eligible for industrial disability retirement.

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

January 18, 2022

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Staff Attorney