

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

On November 28, 2022, Andrew R. Johnson (Respondent) applied for industrial disability retirement based on orthopedic conditions (back, left shoulder, and bilateral knees). By virtue of employment as a Correctional Officer for California Institution for Women, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

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

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 6, 2024. Neither Respondent nor Respondent CDCR appeared, despite receiving timely and appropriate notice of the hearing. A default was taken as to both Respondent and Respondent CDCR.

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. Armagan testified in a manner consistent with his examination of Respondent and his IME reports. As to Respondent's bilateral knee injuries, Dr. Armagan's suggested limitation from prolonged work in a kneeling or squatting position was consistent with Respondent's physical requirement of only occasional kneeling and squatting. Regarding Respondent's left shoulder, Dr. Armagan expressed

concerns as to the validity of his claimed loss of motion which were inconsistent with the objective findings on exam. For Respondent's lumbar spine, Dr. Armagan found intact sensory and motor function. Based on the physical examination, Dr. Armagan concluded that Respondent was not substantially incapacitated for the performance of his usual and customary job duties due to any orthopedic condition.

After considering all the evidence introduced, as well as the 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. Furthermore, the only medical evidence that was admitted established that Respondent was not substantially incapacitated. The ALJ found that Dr. Armagan testified credibly and convincingly during the hearing. Although some medical records submitted to CalPERS showed that Respondent had medical conditions that affected his orthopedic condition, Dr. Armagan was able to convincingly describe why they did not substantially incapacitate Respondent from performing his duties. Accordingly, the ALJ found that Respondent was not substantially incapacitated for the performance of his usual job duties as a Correctional Officer for Respondent CDCR due to orthopedic conditions (back, left shoulder, and bilateral knees) when he applied 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 that "Government Code" be added prior to the "§" in both paragraphs 3 and 4 of page 13. Staff also recommends that "and uncertain" be deleted from paragraph 3 of page 13; and ". . ." be added after "[B]oard" in paragraph 4 of page 13.

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