

**ATTACHMENT B**

**Staff Argument**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Kevin Johnson (Respondent) was employed as a Correctional Officer II with the County of Nevada, (Respondent County). By virtue of his employment, Respondent was a local miscellaneous member of CalPERS.

On November 16, 2018, Respondent submitted an application for disability retirement on the basis of an orthopedic condition (bilateral shoulders). CalPERS approved the application, and Respondent retired for disability effective August 18, 2018.

By letter dated June 23, 2023, CalPERS notified Respondent that it would be reevaluating him to determine whether he remains substantially incapacitated and entitled to continue receiving disability retirement.

To remain eligible for disability retirement, competent medical evidence must demonstrate that the individual remains substantially incapacitated from performing the usual and customary duties of his or her former 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.

As part of CalPERS' review of Respondent's medical conditions, Respondent was sent to Harry A. Khasigian, M.D. for an Independent Medical Examination (IME). Dr. Khasigian interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed medical records. Dr. Khasigian also performed a comprehensive physical examination. Dr. Khasigian's medical opinion is that Respondent can perform the duties of his position as a Correctional Officer II and is therefore no longer substantially incapacitated.

After reviewing all the medical documentation and the IME reports, CalPERS determined that Respondent was no longer substantially incapacitated and should therefore be reinstated to his former position as a Correctional Officer II.

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 September 25, 2024. Respondent represented himself at the hearing. Respondent County did not appear at the hearing, so the matter proceeded as a default against Respondent County.

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. Khasigian testified in a manner consistent with his examination of Respondent. Dr. Khasigian explained that Respondent had two successful corrective surgeries for his shoulders. Dr. Khasigian acknowledged that Respondent may have some discomfort performing some of his job duties, but testified that Respondent was still capable of performing his usual job duties. Dr. Khasigian also believed that Respondent's subjective complaints seem disproportionate to what the objective evidence revealed, including x-rays and MRI scans. Dr. Khasigian believes that Respondent has no limitations which would prevent him from performing his duties as a Correctional Officer II; therefore, Respondent no longer meets the CalPERS disability standard.

Respondent testified on his own behalf. Respondent disagreed with Dr. Khasigian's opinion. Respondent presented various medical reports from treating and workers' compensation physicians to support his claims. Respondent believes his right shoulder requires further medical intervention, which he has not completed. Respondent explained that his failure to seek further medical attention was due to family obligations.

The ALJ found that CalPERS met its burden of proving by competent medical evidence that Respondent is no longer substantially incapacitated. The ALJ found that Dr. Khasigian's testimony was comprehensive and persuasive. Respondent did not present any competent medical evidence to the contrary. As a result, the ALJ held that Respondent is not substantially incapacitated from performing his usual duties. After considering all the evidence introduced as well as arguments by the parties at the hearing, the ALJ denied Respondent's appeal.

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

January 13, 2025

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Staff Attorney