

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION**

Tenillia Hebron (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated August 11, 2023. For reasons discussed below, staff argues the Board should deny the Petition for Reconsideration and uphold its decision.

Respondent applied for industrial disability retirement (IDR) based on an orthopedic (right knee) condition. By virtue of her employment as a Hospital Police Officer for the Department of State Hospitals at Atascadero State Hospital (Respondent Hospital), Respondent was a state safety member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Don T. Williams, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME) of Respondent. Dr. Williams interviewed Respondent, reviewed her work history, job description and physical requirements, obtained a history of her past and present complaints, reviewed her medical records, and performed a comprehensive examination of Respondent's orthopedic condition. Dr. Williams opined that Respondent was not substantially incapacitated from the performance of her duties due to an orthopedic condition.

After the initial IME was completed, CalPERS provided Dr. Williams with additional medical records. After review of the additional evidence, Dr. Williams reiterated his opinion that Respondent does not have an orthopedic impairment that rises to the level of substantial incapacity to perform her usual job duties as a Hospital Police Officer.

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 their 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 her position due to an orthopedic (right knee) condition. On December 21, 2021, Respondent was notified of CalPERS' denial of her IDR application, and she was advised of her appeal rights.

Respondent appealed this determination and exercised her right to a hearing before an ALJ with the Office of Administrative Hearings (OAH). A hearing was held on July 17, 2023. Respondent represented herself at the hearing. Personnel Officer Jaycob Javaux observed the hearing on behalf of Respondent Hospital, but did not participate substantively.

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, answered Respondent's questions, and clarified how to obtain further information on the process.

At the hearing, Dr. Williams testified in a manner consistent with his examination of Respondent and his IME reports. Dr. Williams assessed Respondent's right knee range of motion and stability of her lower extremity ligaments during the physical examination. Dr. Williams found that Respondent's knees had excellent range of motion, and Respondent had no apprehension of re-dislocation when he applied pressure to her knees. Respondent's right thigh was 0.25 inches smaller than her left, which Dr. Williams explained was not significant to show atrophy. Dr. Williams found that Respondent's subjective symptoms were not corroborated by objective findings on exam. Dr. Williams determined that while Respondent may have some discomfort with activities such as climbing stairs, kneeling, and squatting, this did not constitute a substantial incapacity to perform those activities.

Respondent testified on her own behalf that her knee injury was debilitating, but she did not call any physicians or other medical professionals to testify. Respondent believes that her impaired condition would be apparent to inmates, which would make her a constant target of harassment and violence. She further testified that she is incapable of reliably running even short distances, making it difficult for her to respond to alarms. She submitted medical records from her treating physicians to support her appeal, as well as a Qualified Medical Evaluation report prepared in response to her workers' compensation claim. The medical records were admitted as administrative hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Dr. Williams testified credibly to his medical opinion, and Respondent failed to present any competent, non-hearsay medical evidence in rebuttal. The ALJ also found it significant that Dr. Williams' report was much more recent than the Qualified Medical Evaluation report from the workers' compensation claim, and the standard applied in disability retirement cases is different from the standard applied in evaluating a worker's compensation claim. The ALJ therefore held that Respondent failed to meet her burden of establishing she was entitled to IDR benefits.

No new evidence has been presented by Respondent's Petition for Reconsideration that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the September 20, 2023 meeting was well reasoned and based on the credible evidence presented at hearing.

For all the above reasons, staff argues that the Petition for Reconsideration should be denied by the Board.

November 15, 2023

---

MEHRON ASSADI  
Staff Attorney