

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Lisa M. Sampson (Respondent) was employed by the California Correctional Institution, California Department of Corrections and Rehabilitation (Respondent CDCR) as a Correctional Officer. By virtue of her employment, Respondent was a state safety member of CalPERS. On February 21, 2023, Respondent applied for disability retirement based on an orthopedic condition (thoracic spine arthropathy).

As part of CalPERS' review of Respondent's medical condition, John D. Kaufman, M.D., a board-certified Orthopedic Surgeon, performed an Independent Medical Examination (IME). Dr. Kaufman interviewed Respondent, reviewed her work history and job descriptions, obtained a history of her past and present complaints, and reviewed her medical records. Dr. Kaufman opined that Respondent was not substantially incapacitated from the performance of her 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 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 August 28, 2024. Respondent represented herself at the hearing. Respondent CDCR did not appear at the hearing and a default was taken only as to 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, answered Respondent's questions, and clarified how to obtain further information on the process.

At the hearing, Dr. Kaufman testified in a manner consistent with his examination of Respondent and the IME report. Dr. Kaufman testified that Respondent had some slight mild back spasms. However, these slight back spasms are common in someone of Respondent's age and do not necessarily suggest a serious pathologic condition. Respondent lacked serious pathological conditions in her back, such as muscle atrophy, sensory disturbances, numbness or asymmetric reflexes. For Respondent's minor condition, Dr. Kaufman opined that she could take over the counter anti-inflammatory

medication for treatment. Based on his physical examination and review of medical records, Dr. Kaufman concluded that Respondent was not substantially incapacitated for the performance of her usual job duties due to any orthopedic condition.

Respondent testified on her own behalf that she would like to return to work but is unable to do so. Respondent did not call any physicians or other medical professionals to testify. Respondent submitted a Qualified Medical Evaluation (QME) report from her workers' compensation matter which was admitted as administrative hearsay. Under Government Code section 11513, subdivision (d), hearsay evidence may be used for the purpose of supplementing or explaining other evidence but cannot be used in itself to directly support a finding.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that the only admissible medical evidence came from Dr. Kaufman, who opined that Respondent is not substantially incapacitated. Because the QME report was admitted as hearsay, it could not in itself directly support a finding. Furthermore, the findings in the QME report were consistent with Dr. Kaufman's findings: much of Respondent's spine was normal and there were no objective findings to substantiate her subjective reports of pain. In sum, the ALJ found that Respondent failed to meet her burden of proof to show by competent medical evidence that she was substantially incapacitated for the performance of her usual duties as a Correctional Officer for Respondent CDCR due to an orthopedic (thoracic spine arthropathy) condition when she applied for disability retirement.

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

November 20, 2024

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Bryan Delgado  
Attorney