

**ATTACHMENT A**

**THE PROPOSED DECISION**

**BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA**

**In the Matter of the Application for Industrial Disability  
Retirement of:**

**JUAN M. CARRILLO and VALLEY STATE PRISON, CALIFORNIA  
DEPARTMENT OF CORRECTIONS AND REHABILITATION,  
Respondents**

**Agency Case No. 2021-0511**

**OAH Case No. 2021090077**

**PROPOSED DECISION**

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 11, 2022, from Sacramento, California.

Helen L. Louie, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Respondent Juan M. Carrillo (Carrillo) represented himself.

Respondent Valley State Prison (VSP), California Department of Corrections and Rehabilitation (CDCR) did not appear. CDCR was duly served with a Notice of Hearing.

The matter proceeded as a default against CDCR pursuant to Government Code section 11520, subdivision (a).

Evidence was received, the record closed, and the matter submitted for decision on January 11, 2022.

## **ISSUE**

Was Carrillo substantially incapacitated from the performance of his usual and customary duties as a correctional officer (CO) for CDCR on the basis of orthopedic (bilateral knees, hips, left shoulder, and back) conditions at the time he filed his application for industrial disability retirement (IDR)?

## **FACTUAL FINDINGS**

### **Jurisdiction**

1. Carrillo was employed by CDCR at VSP as a CO. By virtue of his employment, Carrillo is a state safety member of CalPERS.
2. On December 30, 2020, Carrillo signed and thereafter filed an application for IDR. The application claimed disability on the basis of orthopedic (bilateral knees, hips, left shoulder, and back) conditions.
3. In an April 28, 2021 letter, CalPERS denied Carrillo's application for IDR. The letter stated that, after a review of the medical evidence submitted, CalPERS found that Carrillo's orthopedic conditions did not render him substantially incapacitated from performing his usual duties as a CO.

4. In a May 10, 2021 letter, Carrillo appealed CalPERS's denial of his IDR application. Consequently, on August 10, 2021, Keith Riddle, in his official capacity as Chief of CalPERS's Disability and Survivor Benefits Division, filed a Statement of Issues for purposes of the appeal. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

### **Carrillo's Work History and Injuries at VSP**

5. Carrillo worked for CDCR for approximately 20 years. On April 4, 2018, while Carrillo was restraining an aggressive inmate, a struggle ensued and Carrillo sustained injuries to his back and left shoulder. On December 21, 2019, while Carrillo was escorting an aggressive inmate, the inmate forcefully pulled out of Carrillo's grasp, causing Carrillo to fall and strike a concrete surface. Carrillo sustained bilateral knee and right hip injuries. After his injuries, Carrillo received physical therapy and epidural shots. He also underwent left shoulder surgery on March 17, 2020, and right knee surgery on September 1, 2020. Following his surgeries, he worked on light duty in the VSP mail room until May 16, 2021, which was his last day of work for CDCR.

### **CO Job Requirements**

6. A CO's assignments include duty in watch towers, housing units, reception centers, kitchens, outside crew supervision, search and escort, control booths, yard gun posts, and transportation. Essential functions include performing peace officer duties during adverse, stressful, or unpleasant situations; defending self and others; disarming, subduing, and applying inmate restraints; and swinging the arm with force.

7. A CO is required to constantly lift and carry up to 25 pounds, sit, stand, walk, bend, and twist; frequently lift over 50 pounds, crouch, stoop, and work at heights; occasionally climb, reach above and below the shoulder, push and pull, power grasp, handle, and walk on uneven ground; and infrequently run, crawl, use fine fingering, and operate hazardous machinery.

### **Independent Medical Examination**

8. At CalPERS's request, Carrillo underwent an orthopedic evaluation by independent medical examiner (IME) Don Thomas Williams, MD,<sup>1</sup> on March 12, 2021. Dr. Williams received his medical degree from Case Western Reserve Medical School in 1977 and completed his orthopedic surgery residency at Columbia Presbyterian Medical Center. He is licensed to practice medicine in California and has been board certified in orthopedic surgery for approximately 30 years. He treats patients, but no longer performs surgeries. He has performed independent medical examinations for CalPERS for approximately seven years.

9. As part of his evaluation, Dr. Williams reviewed Carrillo's records, including his treatment records, requirements and essential functions of his CO position, and application for IDR; interviewed Carrillo; and performed a physical examination. Dr. Williams prepared an initial report dated March 12, 2021; a first supplemental report dated April 7, 2021; and a second supplemental report dated May 14, 2021. He testified at hearing consistent with those reports.

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<sup>1</sup> MD is an abbreviation for Doctor of Medicine.

10. On his physical examination, Dr. Williams noted that Carrillo walked with a normal gait without use of a cane or crutch. He also made the following pertinent findings:

Carrillo's knees had good range of motion and stability with no locking or popping. He had some mild medial joint line tenderness over the right knee post-surgery. Carrillo could only squat to 25 percent of normal, which Dr. Williams believed was not his best effort. Notably, although Carrillo could not kneel with his right knee, he was able to recover from the left kneeling position with the right leg. In sum, Dr. Williams assessed that Carrillo had a functional range of motion and strength in both knees.

Carrillo's hips had full range of motion and no specific area of tenderness at the examination.

Carrillo's left shoulder had slight loss of range of motion due to pain and tightness. However, Dr. Williams deemed it to be stable and within a functional range of motion following the surgery.

Carrillo's back showed evidence of tightness and some pain, but it remained within a functional range of motion. He also had normal reflexes. A lumbar MRI showed only mild spondylosis without significant canal stenosis or neural foraminal narrowing. Electrodiagnostic studies were normal.

11. Dr. Williams observed that the objective findings of his examination were "all almost normal" and did not substantiate Carrillo's subjective complaints of disabling limitations. Thus, after considering Carrillo's job requirements, Dr. Williams opined that Carrillo was not substantially incapacitated from performing the usual duties of a CO.

12. Finally, in his May 14, 2021 supplemental report, Dr. Williams specifically addressed the opinion of Sanjay Deshmukh, MD, the qualified medical examiner for Carrillo's worker's compensation claim. In his report, Dr. Deshmukh opined that Carrillo was limited to lifting, pushing, and pulling 30 pounds; could only engage in limited bending and stooping; and was precluded from repetitive at or above shoulder level work. Dr. Deshmukh did not testify at hearing. Dr. Williams noted that Dr. Deshmukh's limitations were inconsistent with Dr. Williams's own relatively unremarkable physical examination of Carrillo. Accordingly, Dr. Williams disagreed with assessment of such limitations.

### **Carrillo's Testimony**

13. Carrillo testified at hearing. He loved and enjoyed his 20-year career at CDCR. He wants to return to work there, but feels that he is unable to due to pain and reduced functional capacity to safely perform the work. He can no longer climb ladders, reach above his left shoulder over 50 percent of the time, or lift/carry/push/pull over 30 pounds with his left arm. Carrillo also does not want to re-injure himself.

14. Apart from two surgeries, Carrillo has had 16 epidural shots in his spine for pain control. With the last shot, he experienced a serious allergic reaction, and he is now unable to receive further epidural shots. Instead, he takes lots of pain medication and sleeping pills to cope with pain and get sleep.

15. Carrillo respects Dr. Williams, but disagrees with his opinion. Carrillo believes Dr. Williams's evaluation was too brief to obtain an adequate picture of Carrillo's impairments and related limitations.

16. The only work Carrillo presently performs is teaching part-time as a criminal justice instructor at San Joaquin Valley College. The teaching position requires working approximately three hours a week.

## **Analysis**

17. When all the evidence is considered, Carrillo failed to offer sufficient competent medical evidence to establish that, when he applied for IDR, he was substantially and permanently incapacitated from performing the usual duties of a CO. He had no medical expert or treating physician testify on his behalf and produced no additional medical records at hearing.

18. By contrast, Dr. Williams's opinion was supported by his independent clinical findings made during a thorough evaluation of Carrillo's conditions. Dr. Williams persuasively testified as to the bases for his conclusions, and also explained why he disagreed with the opinion of Dr. Deshmukh, who did not testify at hearing.

19. The burden was on Carrillo to offer sufficient competent medical evidence to support his IDR application. Because Carrillo did not meet that burden, his IDR application must be denied.

## **LEGAL CONCLUSIONS**

1. As the applicant, Carrillo has the burden of proving by a preponderance of the evidence that his application for IDR should be granted. (Evid. Code, § 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting"]; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn.



5.) A preponderance of the evidence means "evidence that has more convincing force than that opposed to it." (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

2. To qualify for disability retirement, respondent had to prove that, when he applied, he was "incapacitated physically or mentally for the performance of his duties in the state service." (Gov. Code, § 21156.) "Disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended and uncertain duration, as determined by the board . . . on the basis of competent medical opinion. (Gov. Code, § 20026.)

3. In *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876, the court interpreted the term "incapacity for performance of duty" as used in Government Code section 20026 (formerly section 21022) to mean "the *substantial* inability of the applicant to perform his usual duties." (Italics in original.) The court in *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 855, 863, explained that prophylactic restrictions that are imposed to prevent the risk of future injury or harm are not sufficient to support a finding of disability; a disability must be currently existing and not prospective in nature. In *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207, the court found that discomfort, which may make it difficult for an employee to perform his duties, is not sufficient in itself to establish permanent incapacity. (See also, *In re Keck* (2000) CalPERS Precedential Bd. Dec. No. 00-05, pp. 12-14.)

4. When all the evidence is considered in light of *Mansperger*, *Hosford*, *Smith*, and *Keck*, Carrillo did not establish that his IDR application should be granted. As explained in Factual Findings 17 through 19, he failed to submit sufficient evidence based upon competent medical opinion that, at the time he applied for IDR, he was

permanently and substantially incapacitated from performing the usual duties of a CO for CDCR. Consequently, his IDR application must be denied.

**ORDER**

The appeal of respondent Juan M. Carrillo is DENIED. CalPERS's decision to deny Carrillo's application for industrial disability retirement is AFFIRMED.

DATE: January 18, 2022

*Wim van Rooyen*

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings