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 Disability Retirement of: PATRICK ONG, Respondent, and DEPARTMENT OF CALIFORNIA HIGHWAY PATROL, Respondent.	Case No. 2012-0493 OAH No. 2013040804

PROPOSED DECISION

This matter was heard before Dian M. Vorters, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on November 4, 2013, in Sacramento, California.

Christopher Phillips, Staff Counsel, represented the California Public Employees' Retirement System (CalPERS and complainant).

Patrick Ong (respondent) was present and represented himself.

There was no appearance by or on behalf of the Department of California Highway Patrol (CHP).

Evidence was received and the record closed on November 4, 2013.

ISSUE

Is respondent permanently disabled or incapacitated from performance of his duties as a State Traffic Officer (patrol officer) for CHP, based upon orthopedic (back and hip) and psychiatric conditions? There is insufficient evidence to support this finding.

FACTUAL FINDINGS

Respondent's Employment History

1. Respondent is currently 52 years of age. He began working for the CHP in 1985. His last date of employment was May 14, 2011. He filed his Application for "Service Pending Industrial Disability Retirement" on June 21, 2011, and retired from service effective September 23, 2011.

Duties of a CHP Patrol Officer

2. As set forth in the State Specifications, under direction of a superior, the CHP patrol officer is responsible to 1) patrol State highways enforcing laws relating to the operation of motor vehicles, 2) provide law enforcement services to State employees, officials, and the public, and provide for safekeeping of State property, 3) provide for protection of the Governor and other constitutional officers and legislators, and 4) perform special staff assignments and related work.

3. Essential functions include an ability to drive and safely operate a patrol vehicle, over extended hours, alone, in all parts of the State, in a variety of climatic, environmental, and traffic conditions, including pursuit under potentially hazardous circumstances; interpret and apply provisions of the Vehicle Code, other laws, and court rulings; remove obstacles from the roadway; stop motorists for unsafe or illegal traffic actions or for vehicle violations; issue all types of enforcement documents; make in-custody arrests; physically subdue combative and belligerent persons who may be armed; render assistance to the public; administer field sobriety tests; take charge at accident scenes and other emergencies, and investigate traffic accidents; administer first aid; lift and carry accident victims or prisoners; testify at court, and monitor/operate mobile radio and emergency equipment in the field; provide law enforcement services in marked patrol vehicle, on foot patrol, or mounted while patrolling State property; serve court-issued warrants, and make arrests; recover evidence and provide for its safekeeping; conduct preliminary investigations and prepare written accident and crime reports.

4. *Physical Requirements of Position/Occupational Title.* On June 21, 2011, respondent signed a form that itemized the physical requirements of the patrol officer position. The form identified the frequency with which various physical activities were expected.

In the "constantly" (over six hours) category, a patrol officer was expected to sit, lift/carry 11 to 25 pounds, drive, be exposed to dust/gas/fumes/chemicals, and operate foot controls using repetitive movements.

In the "frequently" (three to six hours) category, a patrol officer is expected to twist (at neck and waist), perform fine finger manipulation, perform simple grasping, use hand repetitively, use a keyboard and mouse, tolerate exposure to excessive noise, extreme temperatures, humidity, and wetness, and use special visual or auditory equipment.

In the "occasionally" (up to three hours) category, a patrol officer is expected to stand, run, walk (sometimes on uneven ground), crawl, kneel, climb, squat, bend (at neck and waist), reach (above and below shoulder), push/pull, power grasp, lift/carry 26 or more pounds, work with heavy equipment, work at heights, and work with bio-hazards (e.g. blood borne pathogens, sewage, hospital waste, etc.).

Respondent's Disability Retirement Applications

5. On June 21, 2011, respondent filed his Disability Retirement Election Application with CalPERS. His intended retirement date was September 23, 2011. In his application, respondent provided the following information as requested:

a. Respondent described his disabilities as "Lower back piriformsis muscle syndrome, discogenic disc disease, lumbar spine, probable degenerative disc disease, lumbar thoracic spine pain, cumulatively through 4-20-2010."

b. Respondent described his limitations/preclusions as "prolong [*sic*] sitting or standing, fatigue."

c. Respondent stated that his injury affected his ability to perform his job in that he "Can not [*sic*] sit in patrol car for 12 hours, can not [*sic*] wear gun belt, can not [*sic*] sit at a desk."

d. Respondent indicated that he was not working and provided this additional information: "I have been diagnosed P.T.S.D. by Kay Williams, a CHP trauma specialist. During my QME with Dr. Salinas, she has scheduled an appointment with a phycologs [*sic*]."

6. By letter dated April 24, 2012, the Benefit Services Division of CalPERS notified respondent that, based upon the medical reports it had received, it had determined that respondent was not substantially incapacitated from performing his duties as a patrol officer with the CHP on the basis of "orthopedic (back and right hip) and [a] psychological condition." CalPERS reviewed medical records prepared by Lawrence Palladino, M.D., William Griffin M.D., Carl H. Shin, M.D., Ana Marta Salinas, M.D., Denise Mathre, D.C., Janak Mehtani, M.D., Joseph Serra, M.D., Michael Barnett, M.D., and Charles Seaman, M.D. The letter also notified respondent of his appeal rights. Respondent timely requested an administrative appeal of CalPERS' decision.

Dr. Joseph Serra, M.D.'s Evaluation of Respondent

7. CalPERS referred respondent to Joseph Serra, M.D. for an Independent Medical Examination (IME) based on respondent's orthopedic complaint. Dr. Serra is a board certified orthopedic surgeon and specializes in sports medicine. On October 31, 2011, Dr. Serra evaluated respondent, which included his review of the CHP job specifications and relevant medical records, a physical examination, and soliciting respondent's medical and

work history. Dr. Serra prepared a report to CalPERS, dated November 7, 2011, and testified at hearing.

8. Dr. Serra's review of the medical records from 2010 and 2011 are summarized as follows:

a. In May 2010: Dr. Palladino prepared a "Doctors First Report" for purposes of worker's compensation. Respondent complained of "chronic back pain due to heavy gun belt and gear, 12-hour shifts, prolonged sitting." Dr. Palladino's diagnosis was "buttock pain and back pain;" treatment was "Tramadol, Vocodin, rest, Flexeril, and chiropractic therapy up to six treatments."

b. In December 2010: X-rays were obtained. The radiological consultation report stated: "Lumbar spine. Impression: Normal. Thoracic spine: Mild degenerative joint disease. Pelvis: Impression: No significant disease can be detected..." Denise Mathre, D.C. was providing treatment to include chiropractic adjustments, heat, flexion distraction and trigger point therapies. Dr. Palladino indicated that respondent could return to modified work on December 29, 2010.

c. In January 2011: Dr. Shin reviewed the x-rays and found them "pretty much unremarkable." Respondent was planning to return to work the next week.

d. In February 2011: An MRI of the lumbar spine was obtained. Study revealed "very minimal narrowing of the intervertebral disc space at L5-S1. There is no encroachment on the neural canal. The axial views reveal no encroachment on the neural foramina at the L5-S1 level. Remaining disc spaces are intact. Overall alignment is intact. Impression: Mild degenerative disc disease L5-S-1." No disc herniation or stenosis was found. Work status was "continued modified."

e. In March through June 2011: Dr. Shin injected two trigger points in the right upper buttock and below the buttock and upper thigh. Respondent continued with chiropractic treatments/adjustments.

f. In August 2011: Dr. Palladino did "not think [respondent] has piriformis syndrome." Respondent was precluded from wearing his work or gun belt and from prolonged sitting; however, "since [respondent] is retired these restrictions are mute [*sic*]." Respondent was to continue taking medications prescribed by his primary care physician and by his psychiatrist, Dr. Mehtani.

9. Respondent provided a medical history that included a non-work-related car accident in the 1990s after which he received chiropractic treatment, a cardiac catheterization in 2010 for irregular heartbeat, and adult onset diabetes for which he took glucoside. Respondent also stated that he had been diagnosed with Post Traumatic Stress Disorder (PTSD) by a trauma specialist used by CHP. His then current complaints were constant dull aching pain in his lower back, pain in the right buttock from the pressure of his weapon and at night, pain in his right hip and leg with excessive activities or walking, and radiating pain

from his right hip down to the lower extremity when driving. Symptoms were aggravated by sitting and relieved "somewhat" by medications.

Respondent reported that he was taken off work from November 2010 to March 2011. From March until May 2011 he performed light duty office work. He told Dr. Serra that he stopped working after May 14, 2011, due to PTSD. It is noted that May 14, 2011, was the date of respondent's arrest for domestic violence, after which he was placed on administrative leave, wholly unrelated to a mental or physical impairment. Respondent reported that he can perform activities of daily living in "moderation." He was able to vacuum, carry groceries, wash the car, make the bed, and do lawn work (for approximately two hours) without significant low back symptoms. Since he stopped working the pain was still present but not excruciating.

10. Dr. Serra performed a physical examination of respondent who stood six feet, two inches and weighed 200 pounds. His blood pressure and pulse were normal. He stood erect with no list, no pelvic tilt, no muscle spasm, no tenderness to palpation over the perivertebral musculature of the lumbar area. Respondent's range of motion (ROM) of the lumbar spine revealed "flexion 100 percent, extension 100, and rotation 100 percent bilaterally." Examination of the right hip revealed tenderness over the right greater trochanter with no swelling or erythema. There were no other areas of tenderness surrounding the right trochanter. ROM of the hips was within normal limits bilaterally.

11. At hearing, Dr. Serra stated that the physical findings relative to respondent's lower back were minimal. In his opinion, someone with chronic back pain does not have 100 percent of motion. If a person has a problem with a disc or spine, there will be a neurologic problem (tingling, reflex changes, radiating pain), and respondent had none of that. His MRI findings showed mild degenerative disc disease which is normal for respondent's age. Dr. Serra stated that there are always degenerative changes due to wear and tear in the lower back.

Respondent claimed pain so bad it caused his paraformis muscle to constrict and threw his back out of alignment causing spasms. Dr. Serra testified that the paraformis muscle does not do that and has no connection to back spasms. It is attached to the sacroiliac joint (part of the pelvis that attaches to the lower part of the lumbar spine on each side) and hips. Further, paraformis syndrome is "extremely rare."

12. *Diagnosis.* Dr. Serra provided the following Impression: 1) Muscular ligamentous strain of the lumbosacral spine, chronic; and 2) Trochanteric bursitis right hip, mild, chronic. Dr. Serra testified that strain to the low back can occur with certain activities such as sitting, lifting, and bending; however, ligamentous strain is a very common problem and not disabling.

13. In response to specific questions posited by CalPERS regarding respondent's condition, Dr. Serra opined:

a. *Are there specific duties member is unable to perform?* There are no specific job duties that respondent is unable to perform because of a physical or mental condition. Respondent has some mild findings suggestive of early strain to his lower back, and mild symptoms of throchanteris bursitis right hip; but on his physical examination he has excellent range of motion and no tenderness in lumbar spine, and only mild tenderness over greater trochanter right hip.

b. *Is member substantially incapacitated for performance of his usual duties?* Respondent is not presently substantially incapacitated for the performance of his duties.

c. *If incapacitated, is the incapacity permanent or temporary?* Not applicable.

d. *Did member cooperate with examination or did you detect exaggeration?* Respondent cooperated with the examination and put forth his best effort without exaggeration of complaints.

e. *What part of disability, if any, is due to non-industrial or pre-existing conditions?* There is no disability present.

f. *Is the condition caused, aggravated, or accelerated by his employment?* Not applicable.

Dr. Michael Barnett's Evaluation of Respondent

14. CalPERS also referred respondent to Michael Barnett, M.D., for an IME based on his psychiatric complaint. Dr. Barnett is licensed in California and Board Certified in Psychiatry and Neurology. He examined respondent on February 10, 2012, at his office. He reviewed the CHP patrol officer job specifications including the physical requirements of the job, and psychological notes of K.M. Williams, M.A., and Dr. Mehtani. Dr. Barnett prepared two reports of his findings dated February 10, 2012, and March 26, 2012, and testified at hearing.

15. Dr. Barnett's review of the psychiatric medical records are summarized as follows:

a. K.M. Williams, M.A. – Psychological notes from March through September 2011; diagnosis was PTSD and alcohol abuse.

b. Dr. Mehtani, M.D. – Psychiatric consultation performed July 26, 2011; diagnosis was major depressive disorder recurrent, rule out bipolar disorder mixed, psychological factors affecting medical disorder, and compulsive personality traits. Dr. Mehtani prescribed Viibryd, Latuda, and Ativan p.r.n.

16. Respondent provided a history to Dr. Barnett that included degenerative disc disease, Type 2 Diabetes, and surgeries unrelated to the current complaint. He reported that

therapy had made him aware of his PTSD and explained his "hyper-vigilance." He denied nightmares, interrupted sleep, appetite changes, irritability, or feelings of guilt. He reported daily flashbacks, low energy, poor concentration, and crying once a week. He stated that he often thinks about killing himself and has "come close" but has never tried and has no plan. He reported being withdrawn but able to enjoy activities and his libido was unchanged. He reported no psychotic or manic symptoms but felt paranoid all the time because "I was a cop." He worried and distrusted people. He denied any history of panic attacks. Respondent reported starting therapy in March 2011. In the 1990s he took Prozac for stress. He admitted a history of alcohol abuse and one arrest for domestic violence. Due to the domestic violence he was unable to carry his CHP duty weapon and therefore unable to perform his job.

17. *Diagnosis.* Dr. Barnett performed a mental status examination of respondent and provided the following diagnosis:

AXIS I:	Major Depressive Disorder, recurrent episode, moderate; PTSD, chronic; Alcohol Abuse, in remission
AXIS II:	Personality Disorder not otherwise specified
AXIS III:	General Medical Conditions: Diabetes type 2, Degenerative Disc Disease
AXIS IV:	Psychosocial Stressors: Physical problems, inability to work, struggles in his marriage, alcohol abuse
AXIS V:	Global Assessment of Functioning Score: 56

18. Dr. Barnett felt that respondent would benefit from psychotropic medication to address symptoms of depression and PTSD. He suggested an antidepressant such as Prozac, since respondent had previously taken this medication and done well.

19. In response to specific questions posited by CalPERS regarding respondent's condition, Dr. Barnett opined:

a. *Are there specific duties member is unable to perform?* Yes, there were specific job duties and critical tasks that respondent was unable to perform. Symptoms causing impairment include flashbacks, hypervigilance, lack of energy, poor concentration, tearfulness, and an inability to trust people and an excessive amount of worry. It is my opinion he would be unable to patrol highways, employ defensive tactics, apply the law, remove obstacles from the highway, arrest people, physically subdue combatants or perform in emergencies, and unable to operate emergency equipment.

b. *Is member substantially incapacitated for performance of his usual duties? If yes, on what date did the disability begin?* Respondent is substantially incapacitated for performance of his usual duties and this began in May 2011.

c. *If incapacitated, is the incapacity permanent or temporary?* Respondent's incapacity is permanent.

d. *Did member cooperate with examination or did you detect exaggeration?* Respondent did not exaggerate his complaints.

e. *What part of disability, if any, is due to non-industrial or pre-existing conditions?* There is no part of respondent's disability that is non-industrial or pre-existing. "I believe that his alcohol abuse and his previous treatment for depression were all related to job stress."

f. *Is the condition caused, aggravated, or accelerated by his employment?* Respondent's condition was caused, aggravated, and accelerated by his employment and his complaint would not be present but for his job.

Dr. Barnett's Supplemental Psychiatric IME Report

20. Charles Seaman, M.D. evaluated respondent on January 21, 2012 for worker's compensation purposes and prepared a report of his findings dated February 16, 2012. CalPERS provided Dr. Barnett with the Psychiatric Qualified Medical Evaluation (QME) report of Dr. Seaman. After reviewing Dr. Seaman's report, Dr. Barnett changed his opinion of respondent's disability and authored a supplemental report to CalPERS dated March 26, 2012. Dr. Barnett testified to his final opinions at hearing.

21. Dr. Barnett noted in his supplemental report that Dr. Seaman, a Board Certified Psychiatrist, found no Axis I diagnosis other than "alcohol dependence and nicotine dependence." Dr. Seaman felt that respondent's alcohol dependence was in early remission. Dr. Seaman also diagnosed respondent with "partner relational problem," provided an Axis II diagnosis of Obsessive Compulsive Personality features, and a GAF Score of 70. In Dr. Seaman's opinion, respondent had not sustained a compensable work-related psychiatric injury on the job. Instead, Dr. Seaman opined that respondent's "transient mood instability, frustration, and anxiety were related to alcohol dependence," which had not reached maximum medical improvement. Respondent's alcohol dependence formed the basis for "temporary disability" only and there was no permanent psychiatric impairment.

22. At hearing, Dr. Barnett recalled that when he asked respondent what his symptoms were, respondent replied that it was a "weird question." Dr. Barnett stated that in answering questions respondent "over intellectualized," providing great detail which was a reflection of anxiety. Dr. Barnett testified that his initial opinion was based on respondent's reports of "flashbacks, hypervigilance, lack of energy, poor concentration, tearfulness, inability to trust people..." Dr. Barnett also noted prior diagnoses of PTSD by K.M. Williams, M.A., respondent's therapist, and Major Depressive Disorder, by Dr. Mehtani, M.D. Dr. Barnett conceded that no physician had diagnosed respondent with PTSD.

23. According to Dr. Barnett, the symptoms for depression and PTSD can overlap. Symptoms of depression include disruptions with sleep, appetite, and concentration, suicidal thoughts, withdrawal, lack of ability to enjoy things, guilty feelings, and reduced libido. Symptoms of PTSD include flashbacks, nightmares, sensitivity to loud noises, and fear in crowded places. Dr. Barnett noted that respondent did not report having nightmares, sleep

interruptions, changes in appetite, irritability, inability to enjoy things, feelings of guilt, panic attacks, or a changed libido. Also, respondent did not experience psychotic symptoms (disorganized or paranoid thoughts, visual or auditory intrusions), or manic symptoms (alternating manic and depressive symptoms such as decreased sleep, increased energy, rapid speech, racing thoughts, risky actions, and increased sexual appetite).

24. Dr. Barnett stated that two symptoms that respondent reported to him, poor concentration and low energy, were invalidated by information in Dr. Seaman's report. When Dr. Seaman evaluated respondent 10 days earlier than Dr. Barnett, respondent reported that he was able to concentrate on things he was really interested in and had energy to do things around the house and with his wife. Dr. Barnett stated that people with PTSD have one or two specific events that precipitated the symptoms. Other than cumulative job stress and finding a dog's ashes when going through his father's things, respondent did not report any seminal traumatic event to either Dr. Barnett or Dr. Seaman, even though he was given the opportunity to do so. Consequently, Dr. Barnett changed his opinion to agree with that of Dr. Seaman.

25. In Dr. Seaman's February 16, 2012 QME Report, he reported no objective evidence of psychiatric impairment or need for apportionment, as follows:

> It is my opinion, with reasonable medical certainty, [respondent] had a period of temporary total disability due to Alcohol Dependence. His history indicates that period was likely from November 2010 to March 2011, which was the same time he was allegedly temporarily totally disabled due to his back injury. His clinical history does not indicate he has had other periods of temporary total disability due to psychiatric symptoms or impairment.
>
> [Respondent] did not present with any objective factors of permanent psychiatric impairment in this evaluation.
>
> It is my opinion, with reasonable medical certainty, [respondent] does not have any permanent psychiatric impairment at the time of this evaluation. He did not report significant psychiatric symptoms or impairment. He did not report significant depressive or anxious symptoms. He reported that he has been active and functioning fairly well. He did not report problems with sleep, appetite, or his cognition. I have assigned a GAF score of 70 ... the issue of apportionment is not applicable.

26. Dr. Seaman recommended that respondent participate in ongoing recovery activities to help maintain abstinence including Alcoholics Anonymous. He also recommended evaluation and treatment of respondent's physical complaints of back pain, degenerative disc disease, and erectile dysfunction, through his primary care physician.

Respondent's testimony

27. Respondent testified that he has lived a life of "pure stress" both at work and at home. He spoke about his wife and her dysfunctional childhood marked by sexual abuse. He stated that he was unaware of her past until three years into his marriage. He described his wife as a "pissed off woman who doesn't like men or want to be controlled by men in any fashion." She reportedly refused therapy. At home, respondent stated that, "I do everything, cleaning house, laundry." They have two daughters.

28. Respondent joined the CHP in 1985 and received five and one-half months training at the academy. He feels the initial training was inadequate to prepare officers for the incidents they encounter on the job. He stated that at first the job is fresh and exciting, but "you begin to see blood and guts right away." He noted that some people cannot take it. He described "carnage every single day" and talking to family members at the hospital, which over time has an effect on you. He stated that you do not have time to recuperate between occurrences. He described "pictures in my head" which he tries not to think about. Respondent saw Dr. Palladino for anxiety and was prescribed medication which did not work "so I started augmenting with alcohol."

29. Respondent described his work ethic as very thorough, leaving no stone unturned. He characterized himself as "one of the good ones." He has held many field officer and back office assignments within the CHP. He stated that he took his job seriously and as part of the Multiple Accident Investigative Team, made sure the investigative work was "100 percent" right. He was the lead investigator in both the Santa Rosa and Amador offices.

30. Regarding his claim of physical impairment, respondent stated that he served the State of California and is here because "I am hurt." He listed having a bad heart, precursors of skin cancer around his neck, loss of hearing, and back injury. Respondent saw Dr. Palladino for back pain caused by him sitting on his handgun case over time. Dr. Palladino prescribed pain medication which respondent feels made the problem worse by treating the symptoms and not the problem. Respondent currently takes medication for diabetes and practices alternative healing including meditation and Buddhist practices. He does not see a therapist. He still has pain in his right hip. He disclosed that he had "piriformis muscle pain" and that simply touching his back caused him pain. It is noted that Drs. Palladino and Serra did not believe respondent suffered from piriformis syndrome. (Factual Findings 8 and 11.)

31. Regarding his psychological issues, respondent stated he had many times almost lost his life on the job. He described a DUI-related crash scene on highway 101 in Redwood City, where 20 to 30 cars piled at an accident scene. He ran toward oncoming traffic to prevent more drivers from crashing into the blockage. He also witnessed a man "blow his head off" and was outnumbered by 10 "gang bangers" at a traffic stop. He stated that law enforcement are conditioned to "stuff the trauma" which gives the appearance that "we don't care." When a family dog was run over, it was a "catalyst" for the other trauma. It is noted that respondent did not witness the death of the family dog. However, he recalled

sobbing for two hours in the garage. He feels that was his "first foray into PTSD." Respondent's therapist, Kay Williams, "informed me of PTSD," which respondent described as pictures in your head and the mind's inability to properly "record things."

Respondent testified that he is unable to write or sit in front of a computer. He stated, "Anything having to do with paperwork is abhorrent to me because law enforcement has to do so much paperwork." Respondent admitted that his alcohol use was a "big mistake" because of the "synergistic effect" with pain pills, which can "aggravate depression."

32. As to domestic violence, respondent stated that his wife has "issues" she has never dealt with. He has "lived with a very angry woman." He developed many methods of dealing with it including her "emotional affair" with another man who "is in prison for beating his wife." Respondent stated that he was working 12-hour shifts and "keeping the house," with "excruciating" back pain, and also had an affair with his wife's best friend.

On the night of May 14, 2011, respondent recalled coming home late in the evening and bending over his sleeping wife to say hello when she awoke and punched him. He reacted by placing her in a "control hold" around the neck. He stated his training kicked in and that "a woman can hurt you bad." He had her on the bed, when his adult daughter walked in. A family friend was also present and called the police. Following his arrest that night, respondent stated that he took "the fifth" to protect his wife because she threw the first punch.

Respondent stated that he was depressed for a year after the arrest. He and his wife separated. He stated, "I blamed this job for all my woes in life." His department became aware of his emotional state and sent him to therapy with Kay Williams. He was ultimately convicted of making a phone call in violation of a restraining order.

33. Respondent did not disclose the details of his situation to Drs. Barnett and Seaman because "cops don't divulge thoughts of suicide" as they will "yank my gun." He reiterated that he thinks like a cop, investigates, leaves no stone unturned, and examines things from every angle. At hearing he became angered while listening to CalPERS' expert witnesses because he felt the physicians had not done a good job. Dr. Barnett only spent 10 minutes with him and accused him of being defensive. Further, Dr. Seaman only wanted to ask about his personal life and not about his work history.

Assessment of Respondent's Disability

34. Carl Shin, M.D., authorized respondent to return to "full duty" with no limitations on April 1, 2011. Approximately one and one-half months later, on May 14, 2011, respondent was arrested. This was his last day of service. Respondent received formal notice from the CHP on May 17, 2011, that an investigation had begun related to his arrest

and charges filed for domestic violence. Applicant was placed on a leave of absence with pay pending investigation. The notice stated:

> During your absence, you are relieved of all duties, rights and powers arising out of your employment including your peace officer powers as authorized by Penal Code § 830.2. You may no longer carry a concealed firearm under the authority of peace officer status as a member of this Department... Unless otherwise directed, you are prohibited from entering or visiting any Department facility.

On June 21, 2011, while on administrative leave, respondent filed his application for disability retirement. And on September 15, 2011, respondent submitted a letter of his intent to retire from CHP effective September 22, 2011. Consequently, the CHP stayed completion of the investigation and adverse action against him. However, by letter dated November 17, 2011, the CHP notified respondent that should he decide to return to CHP, the adverse action would be pursued.

35. The professional opinions of Drs. Serra, Barnett, and Seaman are persuasive. Their findings, based on their physical/psychiatric examinations of respondent and review of his medical records, are given great weight. Prior to April 2011, respondent suffered back sprain from repetitive activity. However, he was cleared to return to full duty by Dr. Shin as of April 1, 2011. The following month, respondent was arrested for domestic violence and therefore, pursuant to peace officer standards, was unable to possess a firearm or perform the duties of a CHP officer. He never returned to work after his May 14, 2011 arrest. He filed this application the following month in June 2011. Based on all of the evidence presented, respondent was cleared and physically/mentally capable of performing his duties as a CHP officer. Respondent did not demonstrate sufficient evidence of a substantially incapacitating condition that would interfere with the performance of his usual activities for CHP.

LEGAL CONCLUSIONS

1. By reason of his employment, respondent is a state safety (patrol) member of CalPERS and eligible for disability retirement under Government Code section 20390.

2. To qualify for disability retirement, respondent must prove that, at the time he applied for disability retirement, he was "incapacitated physically or mentally for the performance of his ... duties and is eligible to retire for disability..." (Gov. Code, § 21156, subd. (a)(1).) As defined in Government Code section 20026,

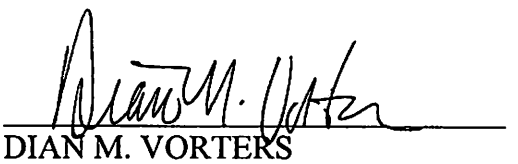
> "Disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended and uncertain duration, as determined by the board, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion.

3. The burden is on respondent to present competent medical evidence to show that, as of the date he applied for disability retirement, he was substantially unable to perform the usual duties of a CHP patrol officer. (*Harmon v. Bd. of Retirement of San Mateo* County (1976) 62 Cal.App.3d 689, 691.) Respondent did not present competent medical evidence to establish that he is substantially incapacitated from performing the usual duties of a CHP patrol officer. There is competent medical evidence of low back strain and degenerative disc disease relative to the normal aging process. Respondent does not suffer symptoms to support a finding of PTSD. Absent competent medical evidence to support his disability claim, respondent's application for disability retirement must be denied.

ORDER

The application of respondent Patrick Ong for disability retirement is DENIED.

DATED: January 3, 2014



DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings