

**ATTACHMENT A**  
**THE PROPOSED DECISION**

BEFORE THE  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA

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

JUAN R. RUIZ,

Applicant/Respondent,

and,

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION,

Contracting Entity/Respondent.

Case No. 2013-0287

OAH No. 2013070542

**PROPOSED DECISION**

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 10, 2014, in San Bernardino, California.

Rory J. Coffey, Senior Staff Counsel, represented Petitioner Anthony Suine, Chief, Benefit Services Division, California Public Employees' Retirement System, State of California.

Applicant/Respondent Juan Ruiz represented himself and was present throughout the administrative proceeding.

No appearance was made by or on behalf of the California Department of Corrections and Rehabilitation.

On June 10, 2014, the matter was submitted.

**ISSUE**

Was Juan Ruiz permanently disabled or incapacitated from performing the usual and customary duties of a Correctional Sergeant as a result of a cardiovascular condition when he filed his application for a disability retirement on July 2, 2012?

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
FILED JUNE 25, 2014  
C. Bodily

## FACTUAL FINDINGS

### *Preliminary Matters*

1. Respondent Juan Ruiz was employed as a Correctional Sergeant by Contracting Entity/Respondent California Department of Corrections and Rehabilitation (Department). By reason of his employment, Mr. Ruiz was a state safety member of the California Public Employees' Retirement System (CalPERS) and subject to Government Code section 21151.
2. On July 2, 2012, Mr. Ruiz signed a Disability Retirement Election Application (application) that he filed with CalPERS. CalPERS received Ms. Ruiz's application on July 2, 2012. In that application, Mr. Ruiz claimed the right to receive a disability retirement on the basis of a heart attack he suffered on November 25, 2010. Mr. Ruiz represented that as a result of his condition he cannot wear a protective vest because it causes him to have breathing problems and puts stress on his heart.
3. CalPERS obtained medical records and reports related to Mr. Ruiz's condition. Stuart Fischer, M.D., a cardiologist selected by CalPERS, performed a disability evaluation of Mr. Ruiz. Following its receipt of Dr. Fischer's report, CalPERS concluded that Mr. Ruiz was not permanently disabled or incapacitated from performing the usual and customary duties of a Correctional Sergeant when he filed his application.
4. By letter dated February 20, 2013, CalPERS notified Mr. Ruiz of its determination that he was not entitled to a disability retirement.
5. By letter dated March 7, 2013, Mr. Ruiz timely appealed CalPERS's adverse determination.
6. On February 28, 2014, petitioner signed the Statement of Issues in his official capacity. The Statement of Issues and other jurisdictional documents were served thereafter on Mr. Ruiz and upon the California Department of Corrections and Rehabilitation. The matter was set for hearing.
7. On June 11, 2014, the record in the matter was opened and jurisdictional documents were presented. No appearance was made by, or on behalf of, California Department of Corrections and Rehabilitation. Sworn testimony was received; official notice was taken; documentary evidence was produced; closing arguments were given; the record was closed; and the matter was submitted.

### *Mr. Ruiz's Background*

8. Mr. Ruiz was born on October 11, 1961. He worked for the California Department of Corrections and Rehabilitation for twenty seven years at various locations including Donovan State Prison, Corcoran State Prison, and Norco Rehabilitation Center.

Mr. Ruiz served as transportation sergeant at Patton State Hospital. Mr. Ruiz achieved the rank of sergeant in 1995. He stopped working for the Department on September 30, 2012, and currently receives a service related retirement. In his position as a Correctional Sergeant, Mr. Ruiz supervised the work of correctional officers in the safe custody, discipline, and welfare of inmates.

Mr. Ruiz lives with his wife, two daughters, and grandchild.

### *The Work of a Correctional Sergeant*

9. According to a memorandum describing the essential functions of a Correctional Sergeant, a Correctional Sergeant must be able to perform the duties of all the various posts; wear personal protective equipment including vests; range qualify in the use of firearms; be able to use a wing baton with force; disarm, subdue and apply restraints on inmates; defend self and co-workers against an inmate with a weapon; inspect inmates for contraband; walk occasionally to frequently to patrol grounds; escort inmates and visitors; run when responding to alarms or serious incidents; climb occasionally to frequently; crawl and crouch occasionally; stand occasionally to continuously; sit occasionally to continuously; stoop and bend occasionally to frequently; lift and carry objects continuously to frequently in the light to medium range, and in the very heavy range occasionally; continuously wear equipment belt weighing 15 pounds; push and pull occasionally to frequently; reach occasionally to continuously overhead; move head and neck frequently to continuously throughout the workday and in the very heavy lifting range occasionally ; move arm occasionally to continuously; move head and wrist frequently to continuously; brace occasionally while restraining an inmate; press occasionally with legs/feet while driving a vehicle; twist the body frequently to continuously in all directions; have vision acuity of 20/60 or better in each eye without correction; have hearing acuity; perform regular duties indoors and outdoors; perform regular duties while exposed to varying weather conditions and temperatures; perform regular duties on a wide range of surfaces; remain functional with exposure to fumes, gases and various chemicals; possess the mental capacity to detect security risks; be able to be exposed to very unpleasant situations involving inmates; have the mental capacity to judge an emergency situation and determine the appropriate use of force; and have the mental capacity to recall an incident to accurately document it.

In addition to the physical and mental demands of the position, a Correctional Sergeant must be able to perform a wide range of administrative tasks. These tasks include effective communication skills; the supervision of staff; the interpretation of policies and procedures; conduct inspection tours; rate inmates on conduct and productivity; maintain schedules; meet regularly with staff to disseminate information; and others duties.

Mr. Ruiz testified that his work involved the use of a protective vest that he wore underneath his uniform. This vest constricted his breathing. Mr. Ruiz acknowledged that no doctor told him that he was unable to work because wearing a vest was difficult and caused him to experience some difficulty in breathing.

*Mr. Ruiz's Physical Condition*

10. Mr. Ruiz suffered a heart attack on November 25, 2010. He was hospitalized for three days after the heart attack and underwent a cardiac procedure which placed two stents in his right coronary artery. Before this procedure, he had a 100% occlusion in this artery. Mr. Ruiz returned to work 30 days after his heart attack. He takes Plavix and blood pressure medications. He also takes other medications. Mr. Ruiz is not under the active care of a cardiologist.

11. Mr. Ruiz's testimony was credible that the protective vest caused him to experience shortness of breath.

*The Testimony of Stuart Fischer, M.D.*

12. Stuart Fischer, M.D. examined Mr. Ruiz as an independent medical evaluator and testified at the hearing. Dr. Fischer received his medical degree from Cornell University Medical College in 1979. Dr. Fischer is board certified in Interventional Cardiology and Cardiovascular Diseases. Dr. Fischer actively treats patients in his practice, which he described constitutes 95% of his time. He also conducts independent medical evaluations related to workers' compensation claims.

13. Dr. Fischer concluded that Mr. Ruiz is not precluded from working as a Correctional Sergeant due to a heart condition. Dr. Fischer arrived at this conclusion after he reviewed medical records and reports from a numerous medical providers relating to Mr. Ruiz's condition, including an echocardiogram report of Stanley Majcher, M.D., a catheterization report dated November 26, 2011, a cardiology follow-up report from David Chen, M.D., and hospital records relating to Mr. Ruiz's hospitalization. In addition, Dr. Fischer reviewed the worker's compensation report authored by Dr. Majcher, and the job description for a Correctional Sergeant. Dr. Fisher also thoroughly examined Mr. Ruiz on December 20, 2012.

Dr. Fischer found that while Mr. Ruiz has significant risk factors for the development of coronary disease, he does not have any limitations related to his heart condition that would preclude him from performing his duties as a Correctional Sergeant. The medical records showed that, while Mr. Ruiz had a 100% occlusion of the right coronary artery when he had his heart attack in November 2010, Mr. Ruiz has no recent signs or symptoms consistent with ischemia. Dr. Fischer's examination of Mr. Ruiz on December 20, 2012 was normal.

Dr. Fischer found support for his opinion in the worker's compensation report prepared by Dr. Majcher. Dr. Majcher performed an initial internal medicine agreed medical examiner evaluation of Mr. Ruiz relating to Mr. Ruiz's workers' compensation claim. In connection with this evaluation, Dr. Majcher administered an echocardiogram. This study, according to Dr. Fischer, revealed thickening of Mr. Ruiz's arteries. At the same time, Dr. Fischer agreed with Dr. Majcher that Mr. Ruiz's ejection fraction of 77%, which measures how well the heart pumps, indicated that his heart was functioning normally.

Dr. Fischer noted in his report that Mr. Ruiz complained that the vest constricted his breathing. Dr. Fischer did not associate this complaint with a heart related problem.

### *Evaluation of the Evidence*

14. A preponderance of the competent medical evidence did not establish Mr. Ruiz's right to receive a CalPERS disability retirement.

A Correctional Sergeant's work requires that Mr. Ruiz a protective vest. Mr. Ruiz testified credibly that the protective vest constricts his breathing. However, his testimony does not constitute competent medical opinion.

By contrast, Dr. Fischer's testimony qualifies as competent medical opinion. Dr. Fisher is a trained cardiologist. He reviewed numerous records, studies and reports in reaching his opinions, and he thoroughly examined Mr. Ruiz. Based on the objective medical evidence in the record, Dr. Fischer determined that the constriction Mr. Ruiz felt when wearing the protective vest was not due to a cardiac condition and that Mr. Ruiz's cardiac condition did not preclude him from performing the usual and customary duties of a Correctional Sergeant.

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. Absent a statutory presumption, an applicant for a disability retirement has the burden of proving by a preponderance of the evidence that he or she is entitled to it. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

### *Applicable Statutes*

2. Government Code section 20026 provides in part:

“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.

3. Government Code section 21151, subdivision (a), provides in part:

Any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, regardless of age or amount of service.

4. Government Code section 21156, subdivision (a), provides in part:

(a)(1) If the medical examination and other available information show to the satisfaction of the board . . . that the member in the state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability . . .

(2) In determining whether a member is eligible to retire for disability, the board . . . shall make a determination on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process. . . .

#### *Administrative Hearsay*

5. Where Government Code section 11513 is applicable, as it is in this matter, the function of hearsay as substantial evidence is delimited by Government Code section 11513, subdivision (c), which declares that hearsay, unless admissible over objection in civil actions, shall not be sufficient in itself to support a finding. (*Carl S. v. Commission for Teacher Preparation & Licensing* (1981) 126 Cal.App.3d 365, 371.)

#### *Competent Medical Opinion*

6. Mr. Ruiz's testimony does not constitute competent medical opinion.

In contrast, Dr. Fischer's findings constitute competent medical evidence and are, further, substantiated by the medical record. Dr. Fisher based his conclusion on his education, training, experience, review of medical records, and physical examination. He found that the objective medical evidence did not support Mr. Ruiz's complaints based upon these matters and based upon on numerous medical sources.

#### *Appellate Authority*

7. "Incapacitated" means the applicant for a disability retirement has a substantial inability to perform his usual duties. When an applicant can perform his customary duties, even though doing so may be difficult or painful, the employee is not incapacitated and does not qualify for a disability retirement. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 886-887.) Mere difficulty in performing certain tasks is not enough to support a finding of disability. (*Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854.)

*Cause Exists to Deny the Application*

8. Cause does not exist to grant the application for a disability retirement filed by Juan Ruiz. A preponderance of the competent medical evidence did not establish that Mr. Ruiz suffered from a physical or mental condition of a permanent or extended and uncertain nature that resulted in his substantial inability to perform the usual and customary duties of a Correctional Sergeant for the California Department of Corrections and Rehabilitation when he filed his application for a disability retirement.

ORDER

The application for a disability retirement filed by Juan R. Ruiz with the California Public Employees' Retirement System is denied.

DATED: June 20, 2014.

A handwritten signature in black ink, appearing to read 'A. M. Levy', is written over a horizontal line.

ABRAHAM M. LEVY  
Administrative Law Judge  
Office of Administrative Hearings