

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:

ANDREW L. WARREN,
Respondent,

and

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION,
R. J. DONOVAN CORRECTIONAL
FACILITY,

Respondent.

Case No. 2013-0929

OAH No. 2014020854

PROPOSED DECISION

Heidi R. Weisbaum, Administrative Law Judge, State of California, Office of
Administrative Hearings, heard this matter in San Diego, California, on December 4, 2014.

Rory J. Coffey, Senior Staff Attorney, represented petitioner, Anthony Suine, Chief,
Benefit Services Division, California Public Employees' Retirement System.

Respondent Andrew L. Warren represented himself in these proceedings.

No appearance was made by or on behalf of respondent California Department of
Corrections and Rehabilitation, R. J. Donovan Correctional Facility.

The record was closed and the matter submitted on December 4, 2014.

DEFAULT

As to respondent California Department of Corrections and Rehabilitation, R. J.
Donovan Correctional Facility, on proof of compliance with Government Code sections
11504 and 11509, this matter proceeded as a default pursuant to section 11520.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED Jan. 05 2015
C. Goddard

ISSUE

Was respondent Warren permanently disabled from performing the usual and customary duties of a Correctional Officer, as a result of a psychological condition (depression/post traumatic stress disorder), at the time he applied for disability retirement?

FACTUAL FINDINGS

Preliminary Matters

1. Respondent Andrew L. Warren (respondent) was employed as a Correctional Officer by respondent California Department of Corrections and Rehabilitation, R. J. Donovan Correctional Facility. By reason of his employment, respondent is a state safety member of the California Public Employees' Retirement System (CalPERS) subject to Government Code section 21151.

2. On July 3, 2012, respondent signed a Disability Retirement Election Application that he filed with CalPERS. In his application, respondent claimed the right to receive a disability retirement on the basis of stress, extreme fatigue, irritability, bad concentration and depression.

3. CalPERS obtained medical and psychological records and reports related to respondent's condition. CalPERS selected a psychiatrist to conduct an independent medical exam (IME). The psychiatrist provided two narrative reports containing findings and conclusions related to respondent's asserted eligibility for a disability retirement.

4. After reviewing the various records and reports, CalPERS determined that respondent's psychological condition was not disabling and that he was not substantially incapacitated from the performance of his job duties as a correctional officer.

5. By letter dated May 10, 2013, CalPERS notified respondent of its denial of his application and of his right to appeal.

6. By letter dated June 6, 2013, respondent timely appealed CalPERS' denial.

7. On February 26, 2014, petitioner filed the statement of issues in his official capacity. The statement of issues and other jurisdictional documents were served on all respondents. The Donovan Correctional Facility did not respond to the statement of issues or appear in this matter.

Respondent's Background

8. Respondent was born on March 2, 1963. In July of this year, he completed an Associate of Arts degree in criminal justice. He was married for 18 years, but about one year

ago, his wife left him. They had one child together, a daughter who is now 16. The daughter lives with respondent during the summer and with her mother the rest of the year. Respondent also has a 25 year old stepson who lives with him. He expects the divorce to be final soon.

9. Respondent served in the U.S. Marine Corps for four years and received an honorable discharge at the rank of corporal. He guarded nuclear weapons in the U.S., and did not see combat. He sustained bilateral broken arms and fractured wrists while in the military and receives disability benefits from the Veteran's Administration. He did not make a claim to the VA for an increase in benefits for his psychological condition.

10. Following his military service, respondent worked six years as a security officer for Home Federal Bank.

11. In 1994, respondent began working as a correctional officer at the Donovan Correctional Facility. Beginning in late 2010, his supervisors began writing him up for sleeping during daytime assignments; he was docked 10% of his pay for a year and a half as a result. In August, September and October 2011, he was on leave from work due to stress, as certified by his doctors. He returned to work in November 2011, was diagnosed with hypertension at the end of that year, and was again certified by his physicians to be out of work from January through March of 2012. He then returned to work on the nightshift, which was better for him as he was less prone to fall asleep unless he had to work a double shift. In July 2012, he was terminated from his position, but was reinstated in November 2012, with a retirement date of March 2, 2013.

The Disability Application

12. On his Disability Retirement Election Application, respondent listed his specific disability as stress. In response to the form's questions, "when and how did it occur?" respondent wrote, "July 5, 2011 at work I feel [sic] asleep due to extreme fatigue & depression."

Respondent's Normal and Usual Duties

13. Petitioner submitted the Duty Statement for a correctional officer. The duties are divided into five groups. The groups are: (1) supervision of the conduct of the inmates during various activities of daily living, including escorting inmates on trips and other movement outside the prison, and preventing escapes and injury to the inmates, employees and property (30%); (2) standing watch, acting as the gate officer, searching visitors for contraband, and supervising visits and visitors (30%); (3) taking periodic count of the inmates, inspecting quarters, checking sanitary conditions, examining mail, and reporting infractions (20%); (4) promoting acceptable attitudes and behavior, participating in pre-release programs, and participating in group counseling (10%); and, (5) completing reports and attending in-service training (10%).

14. Petitioner also submitted the list of a correctional officer's Essential Functions. The list includes being able to work overtime, which is described as "mandatory" and means possibly "8 hours at one time, and on very rare occasions up to 16 hours in situations such as a riot." Other essential functions, include but are not limited to, being able to range qualify with weapons; to swing a baton; to disarm, subdue and apply restraints to an inmate; to defend against an inmate armed with a weapon; to walk, run, climb and crouch occasionally to frequently; and to lift and carry continuously to frequently. The correctional officer must also have the mental capacity: (1) to be alert and aware of security risks, (2) to be exposed to very unpleasant situations including suicides and the throwing of bodily fluids at officers, and (3) to judge an emergency situation, determine the appropriate use of force, and carry out that use of force.

Dr. Jaga Nath Glassman, M.D.

15. Dr. Glassman is a Board certified psychiatrist. He has a private practice, is an Assistant Clinical Professor in the University of California San Diego, School of Medicine Psychiatry Department, and is on the faculty of the San Diego Psychoanalytic Society and Institute. He is also a treating psychiatrist for juvenile hall and both the county and federal jails. He has evaluated and treated law enforcement officers and prison guards.

16. CalPERS selected Dr. Glassman to perform the IME of respondent. Dr. Glassman conducted the examination on December 13, 2012. He spent approximately one hour with respondent and wrote a report of his findings and conclusions.

17. Dr. Glassman's report described his psychiatric medical evaluation of respondent. The evaluation consisted of an interview during which Dr. Glassman asked respondent about his chief complaint, past psychiatric history, substance abuse history, current medications, legal history, past medical history, activities of daily living, and his social and developmental history. Dr. Glassman also performed a mental status exam and reviewed records from respondent's other health providers. At the time of the evaluation, respondent was still living with his wife, the daughter, and the stepson.

18. Dr. Glassman noted the following: that respondent was not working due to anxiety, worry, anger and depression from "stress at work"; that respondent did not feel capable of working because of his work environment and his supervisors; that respondent did not think a different job or supervisor would be any better because he was not sleeping well and was tired during the day; and, that respondent had had four write-ups for falling asleep at work. Dr. Glassman reported that work had become more stressful for respondent during the three years prior to the interview, which was when respondent's depression started. At that time, respondent's energy level had been low; he had had no motivation; he had had decreased interest in his usual activities; and he had been sleepy all day and unable to sleep well at night.

19. Dr. Glassman noted that respondent reported some improvement due to his treatment with his psychologist, Dr. Katy Errica. Respondent informed Dr. Glassman that

his mood was “mostly sad, down, and irritable,” that he was having urges “to drink again,” but had not succumbed to the urges, and that his sex drive, concentration and memory had decreased. Respondent also told Dr. Glassman that he sometimes had let his grooming go and had gone up to three days without showering or brushing his teeth.

20. Respondent told Dr. Glassman that he had had a drinking problem from about age 18 to age 23, but had stopped because he was almost in a bad automobile accident as a result of driving while intoxicated. Dr. Glassman did not think respondent had a drinking problem or any other substance abuse problem. He also reported that respondent had no history of arrests or any legal problems.

21. At the time of the interview, respondent was seeing Dr. Errica on a regular schedule, once every week or two, and taking Xanax for anxiety, Ambien for sleep, and a medication for depression the name of which respondent could not remember. Respondent was also seeing a psychiatrist at the VA, but Dr. Glassman did not note how often.

22. Dr. Glassman performed a mental status examination of respondent. He explained that a mental status exam is the direct, objective observations of the person by the physician, and it includes the person’s grooming, physical condition, mood, affect, thought processes, and thought content. Dr. Glassman noted that respondent arrived on time, was wearing nice clothes, had a well-trimmed mustache, made good eye contact, was animated and spontaneous, smiled and laughed appropriately, had a responsive mood and a good range in affect, and did not display any signs of depression or anxiety. Dr. Glassman further reported that respondent’s thought processes were coherent, relevant and goal-directed, with no psychotic symptoms. Respondent demonstrated no bizarre behavior.

23. Dr. Glassman’s report includes a summary of his review of the records sent to him by CalPERS. The summary reflects reports from three different practitioners, written for worker’s compensation purposes, and contains the following information:

- (1) Bradford Frank, M.D. In a Physician’s Report on Disability, dated July 17, 2012, Dr. Frank diagnosed respondent as having Major Depression and Insomnia, but indicated respondent was not substantially incapacitated from being able to perform his usual work.
- (2) Sarah Ray, PsyD. In a Physician’s Report on Disability, also dated July 17, 2012, Dr. Ray stated respondent had had a prolonged exposure to a stressful environment, and had been having problems with sleep, anxiety, panic, and depression. Dr. Ray’s diagnosis was Depression and Panic Disorder without agoraphobia. Dr. Ray indicated respondent was “currently” substantially incapacitated from performing his usual work, but she did not feel it would be a permanent incapacity. Two tests showed mild depression and moderate anxiety. In a Primary Treating Physician Progress

Report, dated July 23, 2012, Dr. Ray reported that respondent was receiving cognitive behavioral therapy once every other week and had made "significant improvement."

- (3) Ira Fishman, M.D. In a Qualified Medical Evaluation report, dated July 18, 2012, Dr. Fishman, an internist, reported that respondent had claimed to have coronary artery disease, hypertension, and heart trouble due to stress at work. Dr. Fishman noted that respondent had suffered disciplinary action due to sleepiness at work. Dr. Fishman's diagnosis was of hypertension controlled on medication, class I obesity, insomnia and excessive daytime sleepiness, depression and erectile dysfunction.¹

24. Dr. Glassman's impression of respondent was that respondent had developed an anxious, agitated depression as a result of feeling that he had been treated unfairly by his superiors. Dr. Glassman thought that the depression had improved with treatment, that respondent showed no mental status abnormalities, and that there was no objective evidence of a current significant mood disorder or anxiety disorder. He said respondent cooperated with the examination and put forth his best effort. He further stated that respondent had been temporarily disabled as a result of his employment but that he currently was not incapacitated from a psychological perspective. Dr. Glassman concluded that respondent was no longer substantially incapacitated from functioning in his usual work as a corrections officer.

25. In July 2013, Dr. Glassman was provided additional records to review. He wrote a supplemental report in which he summarized his findings. His summary reflects reports from Dr. Ray and two additional practitioners:

- (1) Sarah Ray, PsyD. There are several worker's compensation reports from Dr. Ray in which she lists her diagnosis of respondent as Depression Not Otherwise Specified, Panic Disorder, and PTSD. In a report dated May 3, 2013, she noted that respondent stated he was sleeping better, but still had some nightmares and anxiety, as well as PTSD symptoms related to his work at the prison. Dr. Ray also noted that respondent was not compliant with therapy and not attending sessions regularly.
- (2) Noelle Balliett, Ph.D. Dr. Balliett saw respondent in May 2013, at the VA. She conducted an evaluation for "anxiety-focused group treatment" and for a second opinion regarding respondent's

¹ Dr. Fishman's 2012 report contains one additional diagnosis which Dr. Glassman failed to mention in his report: Chronic occupational emotional stress while employed as a correctional officer. Dr. Glassman was not questioned about this omission.

diagnosis.² Dr. Balliett reported that respondent had described a traumatic event at the prison that was particularly disturbing, that he was having nightmares and other symptoms of post-traumatic stress disorder (PTSD) and depression. Respondent also reported having panic attacks twice a week. Her diagnoses were PTSD, Panic Disorder, and Dysthymic Disorder.³

- (3) Robert Cabico, M.D. Dr. Cabico, a psychiatrist, noted that respondent had a normal mental status exam and related that he was eating well, sleeping better, felt more refreshed, and enjoyed going on walks. Dr. Cabico opined that respondent's depression was stable.

26. Dr. Glassman's opinions did not change after reviewing these reports. He did not see any signs or symptoms of PTSD in respondent. He explained that with PTSD, there must be at least one traumatic event. The traumatic event is not just a stressful event, but something overwhelming that is not expected in a normal day. Once there is a traumatic event, there are three cardinal symptoms: hyperarousal, avoidance/numbing of responses, and re-experiencing. Hyperarousal is when a person is always on edge and/or has an exaggerated startle response. He did not see this in respondent. Avoidance/numbing means a person avoids problematic situations and/or is emotionally numb, feeling nothing. Again, he did not see this in respondent. Re-experiencing is the nightmares, flashbacks, or intrusive memories of the event. Dr. Glassman stated respondent may have suffered a traumatic event, but reiterated that respondent said nothing to him about any such event. Dr. Glassman thought this was very unusual considering respondent knew he was being seen for a psychological disability evaluation. He repeated that during his interview of respondent, respondent was not focused on trauma or PTSD, but instead stated he just did not want to return to a prison job.

27. Dr. Glassman was particularly skeptical of Dr. Balliett's diagnoses because Dr. Balliett was an inexperienced, unlicensed psychologist trainee; because she did not comment on the discrepancy between respondent's self-reporting on questionnaires and his verbal reporting of symptoms to her; and, because her mental status exam of respondent showed some mild anxiety, only, which was contrary to her diagnoses. Dr. Glassman thought respondent might have exaggerated his symptoms in the hope of obtaining a psychological disability.

28. Dr. Glassman's report contains one obvious contradiction. In his initial report, Dr. Glassman wrote that he asked respondent if he felt completely incapable of performing

² Dr. Glassman did not record who requested the second opinion or why it was requested.

³ Dr. Balliett's May 2013 report was provided by petitioner and admitted into evidence as administrative hearsay.

his usual work to which respondent stated, "No way." During his testimony, Dr. Glassman was asked if this response surprised him given that respondent was seeking a disability retirement. Dr. Glassman replied that he was not surprised because he understood respondent to mean, "No way am I capable of working." Dr. Glassman acknowledged that the wording of his report was ambiguous. Later in his report, however, under "Impressions, Findings and Opinion," Dr. Glassman wrote that respondent "feels [he] is fully capable of returning to work" Given Dr. Glassman's testimony that respondent did not feel capable of returning to work and his explanation of the wording in his report, this latter entry to the contrary is accorded no weight.

29. Nevertheless and despite this contradiction in the report, Dr. Glassman otherwise testified consistently with his reports. He admitted that he did not explore respondent's job duties with him as part of the evaluation. He implied he had done enough law enforcement officer examinations prior to respondent and was, therefore, familiar with the duties of the position, so that he did not need to discuss them with respondent. Additionally, he explained there was no need to discuss respondent's job responsibilities with him because respondent did not say he was too depressed or sad to do his work. He just said he could not get along with his supervisors.

30. Dr. Glassman agreed that respondent had been under a lot of stress at work and had developed signs and symptoms of a major depression. But, he concluded that the major depressive episode was mostly in remission when he saw respondent. Evidence of this was the fact respondent denied being sad, down and depressed all the time, indicated that he enjoyed fishing, golf, televised sports, and a good meal, and had hopes and plans for the future, such as going to college to study criminal justice and becoming a private detective or a bodyguard. Dr. Glassman testified that people with major depression are sad and depressed all the time, have no plans for the future, have no hope, and find nothing enjoyable.

31. Dr. Glassman also noted that in a July 2014 supplemental worker's compensation report from Dr. Fishman, respondent was reported to be taking an anti-anxiety medication on an as needed basis, not an every day basis, and also was reported to be taking up to one a day and no more than five per week. This suggested to Dr. Glassman that the anxiety was not interfering with respondent's capacity to function because, if it were, he would be taking the medication every day and would be taking more than one per day. He therefore did not find that respondent was substantially incapacitated from performing the usual functions of a correctional officer.

Respondent's Testimony

32. Respondent testified in a confused manner and did not seem prepared for the hearing. He had difficulty recalling the dates he worked, the dates he was out on temporary disability leave, and the reasons for his time on disability. He came across as a nice person, made eye contact, did not exaggerate his complaints, and his affect was appropriate at all times. But his testimony was so disjointed that it was hard to follow.

33. Respondent described his job at the Donovan Correctional Facility. He started in the lock-up unit, which housed the “worst of the worst” criminals. He said officers were supposed to spend a maximum of two years in lock-up, but he was there for eight years the first time he was assigned there. He then spent about four years in transportation, one year in administration, and then the remainder back in lock-up. Although respondent complained about the amount of time he spent in the lock-up unit, he also stated that the officers chosen for lock-up are an “elite” group.

34. Respondent stated he “was a bit of a square” when he started at the prison. But he learned how to deal with the inmates, learned to treat people the way they wanted to be treated, and stated he “loved the job.” He testified that over the years, he was better at dealing with the inmates than with his supervisors.

35. Respondent testified about an incident in 1995, where an inmate was shot in the head and killed by a correctional officer. Respondent stated that everyone heard the shot as it occurred outdoors while the inmates were in the yard. Respondent did not see the shot, but he did see the inmate’s body lying in the yard and it greatly affected him. The inmate was a 22 year old “trouble-maker” and “race-baiter,” and respondent admitted he did not like him. But respondent recalled some of the other officers laughing about the shooting later in the day, and that bothered him. He said they were not offered any type of psychological help to deal with the shooting.

36. Respondent testified that he first started having disturbing thoughts about the incident one to two weeks after it occurred. He started waking up at night, could see the inmate’s face, and could hear the sounds from the prison yard. He admitted he did not seek treatment in 1995, but instead waited until May 2013, when he was referred to the anxiety disorders clinic at the VA. He did not realize the amount of stress he was under at the time. He claims he still has nightmares about the incident. He acknowledged he did not tell Dr. Glassman about the incident or the recurring nightmares. He stated he did not feel comfortable with Dr. Glassman.

37. Respondent was vague and disorganized when testifying about the problems he had at the prison regarding falling asleep on the job. He testified that each time he was written up for falling asleep he was working mandatory overtime, meaning a double shift. He said he would fall asleep during the second shift, not the first.

38. Respondent continues to have problems sleeping. He goes to sleep at about 10 pm, wakes at about 2 am, and cannot get back to sleep. He is prescribed Ambien for sleep, but does not take it every night. He stated that, in his last year on the job, he worked from 10 pm to 6 am because he could not sleep anyway.

39. Respondent did not call any witnesses to testify on his behalf. Petitioner submitted the May 2013 report from Dr. Balliett. He submitted only one report, the July 2014 Supplemental Report by Dr. Fishman. That report reviewed information from other evaluations by Dr. Fishman, focused primarily on respondent’s hypertension, and included a

lengthy review of the literature regarding heart disease and hypertension in police officers, the impact of job stress on hypertension, and the impact of disruptions in circadian rhythm on heart disease. The report also included Dr. Fishman's review of another professional's psychological evaluation that indicated respondent had a major depressive disorder.

40. Respondent was asked about the AA degree he completed this past year. He stated his only purpose for getting the criminal justice degree was to show his kids he could graduate. He said he has no specific plans to seek employment.

Evaluation

41. A preponderance of the evidence established that respondent is not entitled to receive a disability retirement. Respondent did not call any psychiatric or psychological witnesses to testify in his behalf. Instead, he relied on the brief summaries of his doctors' examinations included in Dr. Glassman's reports and the one report by Dr. Balliett. The summaries and the report do not constitute competent evidence and do not outweigh the testimony and reports of Dr. Glassman.

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.* (Italics added.)

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 21152 provides in part:

Application to the board for retirement of a member for disability may be made by:

[¶] . . . [¶]

(d) The member or any person in his or her behalf.

5. Government Code section 21154 provides in part:

The application shall be made only (a) while the member is in state service . . . On receipt of an application for disability retirement of a member . . . the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for the performance of duty. . . .

6. Government Code section 21156, subdivision (a)(1) provides in part:

If the medical examination and other available information show . . . 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

7. Government Code section 21166 provides in part:

If a member is entitled to a different disability retirement allowance according to whether the disability is industrial or nonindustrial and the member claims that the disability as found by the board . . . is industrial and the claim is disputed by the board . . . the Workers' Compensation Appeals Board, using the same procedure as in workers' compensation hearings, shall determine whether the disability is industrial.

The jurisdiction of the Workers' Compensation Appeals Board shall be limited solely to the issue of industrial causation. . . .

Appellate Authority

8. Hearsay evidence alone does not constitute competent evidence to support a finding. (*Lake v. Reed* (1997) 16 Cal.4th 448, 461; Gov. Code §11513, subd. (d).)

9. Respondent argues the opinions of Drs. Errica, Ray, Cabico and Balliett should outweigh the opinions of Dr. Glassman. The problem with respondent's argument is that there is no direct evidence from any of these doctors. Respondent did not call them to testify, although he had the right to do so. (*Lake v. Reed, supra*; Gov. Code §11513, subd. (b).) In addition, Dr. Balliett's report contains statements supportive of Dr. Glassman's opinion that respondent might have exaggerated his symptoms. She notes that respondent "readily assented to symptom questions . . . but had difficulty providing examples [of PTSD and panic disorders]." And, she states that respondent "reported having *significant worries related to his ongoing disability claim, but denied worries regarding other topics.*" (Italics added.) The only evidence of respondent's treatment by the other doctors and their conclusions is found in the abbreviated summaries of their visits with respondent in Dr. Glassman's reports. Those summaries are insufficient to negate Dr. Glassman's observations, conclusions and opinions.

10. There is no dispute that respondent suffered a major depressive disorder. But, the only competent evidence presented at the hearing - the testimony and reports of Dr. Glassman - showed the disorder is in remission. As Dr. Glassman stated, someone with a major depressive disorder does not find pleasure in anything and sees no hope for the future. Yet, respondent completed an AA degree after seeing Dr. Glassman, admitted he was not sad and depressed all the time, and said he enjoyed certain normal activities of daily life like televised sporting events and good meals. Additionally, respondent claimed he did not feel comfortable enough with Dr. Glassman to tell him about his recurring nightmares and the other symptoms of PTSD. Yet, respondent did not list those problems on his Disability Retirement Application, either. Nor did he include the date those problems allegedly began. The application includes a July 5, 2011 date, only, not an incident from 1995. Dr. Glassman's opinion that respondent's depression had improved, that there were no objective signs of a current mood or anxiety disorder, and that respondent was no longer substantially incapacitated from functioning as a corrections officer is supported by the weight of the evidence.

11. Respondent testified his problem with the job was not the inmates, but rather his supervisors and managers. He even admitted he could work one regular shift. Other than his own testimony, which as stated was difficult to follow, respondent did not produce sufficient direct evidence to show he was incapacitated from performing the usual duties of a correctional officer. It was his burden to do so and he did not meet his burden.

Cause Exists to Deny the Application

12. By reason of the evidence set forth above, it is determined that, at the time respondent applied for disability retirement, he was not incapacitated for the performance of the usual duties of a correctional officer.

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ORDER

The application for industrial disability retirement filed by Andrew L. Warren is denied.

DATED: January 2, 2015


HEIDI R. WEISBAUM
Administrative Law Judge
Office of Administrative Hearings