

**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:

WILLIAM A. JOHNSON,

Respondent,

and

CALIFORNIA INSTITUTION FOR MEN,  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION,

Respondent.

Case No. 2014-0911

OAH No. 2015060089

**PROPOSED DECISION**

Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 3, 2015, in San Diego, California,

Rory J. Coffey, Senior Staff Counsel, represented the California Public Employees' Retirement System.

Respondent William A. Johnson represented himself.

Respondent California Institution for Men, California Department of Corrections and Rehabilitation did not appear at the hearing.

The matter was submitted on December 3, 2015.

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
FILED Dec 23, 2015  
C. Bodily

## FACTUAL FINDINGS

### *Jurisdiction*

1. Anthony Suice, Chief, Benefit Services Division of the California Public Employees' Retirement System (CalPERS), filed Statement of Issues No. 2014-0911 in his official capacity on May 6, 2015.

2. On November 27, 2013, respondent signed a Disability Retirement Election Application and submitted it to CalPERS. Respondent sought an industrial disability retirement. Before filing his application, respondent was employed by the California Institution for Men, California Department of Corrections and Rehabilitation as a Correctional Officer. His last day on the payroll was July 15, 2012; his retirement was to become effective upon the expiration of benefits. In filing his application, respondent claimed a disability on the basis of generalized anxiety disorder and pain disorder due to association with physical and emotional stressors. By virtue of his employment, respondent is state safety member of CalPERS subject to Government Code section 21151.

3. By letter dated June 20, 2014, CalPERS informed respondent that his psychological condition was not disabling and as a result and he was not substantially incapacitated from the performance of his job duties, and denied the application. Respondent appealed.

### *Job Description*

4. The essential functions of a correctional officer include: working in minimum and maximum institutions for males and females; performing all duties of all the various posts; working mandatory overtime; qualifying with weapons; swinging batons; disarming and restraining inmates; defending himself or herself against an armed inmate; walking, running, climbing, crawling, standing for long periods of time, stooping, bending, lifting and carrying light to heavy materials; pushing and pulling; reaching overhead; judging an emergency situation; determining the appropriate use of force; carrying out use of force; and so forth.

### *Respondent's Work History*

5. Respondent began working at the California Institution for Men (CIM) in February 1990 as a correctional officer and maintained that position throughout his career. He was never promoted.

During the first 15 years of his career, respondent believed the facility was understaffed and he was concerned that something bad would happen because of that. In 2005, another correctional officer was stabbed to death and that shook him up. He feared that he too would suffer harm. He had direct contact with inmates but was not bothered by working with inmates.

Respondent was also concerned about his lack of ability to control his schedule. He often would have to work overtime, including working double shifts. He disliked working overtime and the unpredictability in his life it caused but he recognized he could not refuse to work overtime.

6. After the death of the correctional officer in 2005, respondent sought assistance through EAP. He found the sessions helpful. He continued to work; he did not file any workers' compensation claim. In 2005, at the request of respondent's EAP counselor, respondent was transferred to an assignment in the gun tower. Respondent believed that after 15 years of working with inmates, he had earned the right to no longer have contact with inmates. His assignment in the gun tower did not require contact with inmates. It was his job to ensure that no inmate tried to climb out of the prison. He was armed with a weapon but never used it. In this assignment, respondent was able to avoid working overtime.

7. On February 14, 2010, respondent was ordered by his supervisor to work overtime. Respondent told him he would not work the second shift because he was tired. Respondent went to the doctor to document his fatigue. Nearly a year later, in February 2011, the California Department of Corrections and Rehabilitation filed a notice of adverse action against respondent based on his refusal to work the overtime shift. The notice provided for a penalty of a 10 percent reduction in salary for six months.

Respondent through his attorney negotiated a stipulation for settlement that provided for a penalty of a five percent reduction in salary for three months, effective March 1, 2011. The State Personnel Board adopted the settlement on April 18, 2013.

In addition to the formal disciplinary action, the warden of CIM removed respondent from his position on the gun tower and returned him to the general pool of correctional officers. As a result, respondent could be assigned to any unit at any time and he would have to interact with inmates.

#### *Respondent's Reaction to the Reassignment*

8. Respondent reacted adversely to the reassignment. He felt humiliated because he viewed the reassignment as a return to the beginning of the line and because he was nearly old enough to be the father of some of the new correctional officers. Respondent felt he had worked hard to move up and he was embarrassed by being brought back down to this position. Part of respondent's difficulty was that he feared and disliked inmates. He had had no contact with them for six years while he worked on the gun tower. He further lost control over his schedule and was subject to having to work overtime.

9. Respondent developed symptoms consistent with an adjustment disorder with anxiety and depression. He was sleepless and angry. He did not have feelings of despair, hopelessness or inability to experience pleasure except when he thought about his job. His

life outside work remained the same. Respondent did not suffer any financial consequences from the temporary reduction in pay because his wife continued to work.

10. Respondent filed a workers' compensation claim and began treatment with many different mental health professionals through U.S. HealthWorks Medical Group, a workers' compensation clinic. Among the professionals he received treatment from were Dr. Reichwald, Dr. Maibaum, Dr. Marshak, Hely Chavez, Dr. Cohn, and Dr. Lamphere.<sup>1</sup>

Respondent saw Dr. Marshak on August 16, 2011, who diagnosed respondent with mild depression and gave him medical foods. Dr. Marshak was respondent's primary treating physician.

Norman Reichwald, PsyD., first saw respondent on July 22, 2011. Dr. Reichwald diagnosed respondent with a major depressive disorder, single episode and mild insomnia.

Hedy Chavez began biofeedback therapy on August 15, 2011.

Leon Santa Cruz, a physician's assistant, diagnosed respondent with anxiety and placed him off work on March 13, 2011, until May 2011. In April 2011, respondent was diagnosed with situational anxiety and stress disorder.

On May 18, 2011, Martha Mason, PhD., wrote a comprehensive psychological report. Her diagnosis was occupational problem, non-industrial. Dr. Maibaum found respondent to be permanent and stationary.

Respondent continued to see various mental health professionals for several more years. He received a number of different diagnoses. He was never treated with anti-anxiety medication. He never returned to work after March 2011.

Respondent realized he would never return to work after he filed his application for disability retirement, and that brought him significant relief.

#### *Independent Medical Evaluation*

11. Dr. Perry Maloff performed an independent medical evaluation of respondent at CalPERS' request and wrote a lengthy report dated April 21, 2014. He took an extensive history and reviewed all of the medical records and reports relating to respondent's workers' compensation claim. His diagnosis was adjustment disorder with mixed features, anxiety and depression that began February 7, 2011, and resolved August 7, 2011.

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<sup>1</sup> None of the medical records or reports from these mental health professionals were introduced into evidence at the hearing. Dr. Perry Maloff who conducted an independent medical examination of respondent reviewed the records. He summarized them and commented upon them in his report dated April 21, 2014, and during his testimony at the hearing

Dr. Maloff disagreed with the diagnoses that respondent suffered from a major depression. He believed that respondent's symptoms were brought on when he learned that he was going to be subject to a personnel action that resulted in the reduction of his pay and, more importantly, that respondent would be reassigned from the gun tower to the general pool for assignment to any job at any time. Respondent believed he had earned the right to have a more senior assignment and not to have contact with inmates. He felt the reassignment was unfair and he was humiliated. Dr. Maloff believed respondent had psychological difficulties that constituted an adjustment disorder with mixed features, anxiety and depression. He felt respondent also had occupational problems. He believed respondent was mostly angry and that would have caused him some difficulty in maintaining focus and concentration at work while he was thinking about the wrongs that had been done to him.

Dr. Maloff noted that by definition, an adjustment disorder cannot last longer than six months and he felt that in respondent's case, it did not last longer than six months. He did not find that the psychosocial stressors had become chronic. Rather, he found that respondent suffered a work-related psychiatric condition that caused a period of temporary total disability on an industrial basis. He concluded, however, that once the adjustment disorder abated, respondent could return to work as a correctional officer without restrictions. He believed respondent suffered from no permanent psychiatric disability and there was no evidence of incapacity.

#### *Dr. Maloff's Testimony*

12. Dr. Maloff is board-certified in psychiatry and has been licensed since 1982. About a quarter of his practice is devoted to medical-legal evaluations. He has served as a qualified medical examiner, an agreed medical examiner, and has evaluated employees referred to him by CalPERS. Dr. Maloff was familiar with the job duties of a correctional officer and, in fact, had treated about 100 correctional officers over the years. He was well qualified to render an opinion as to respondent's capacity to perform the job duties of a correctional officer.

13. Dr. Maloff testified at the hearing as follows: He reviewed all the medical records and reports relating to respondent's workers' compensation claim and took an extensive history from respondent. He found respondent to be exceptionally cooperative and forthright, with many admirable characteristics and traits. He described respondent as a proud, intelligent, hard working person who took pride in his work and his career. He believed respondent was dedicated to his profession and he had earned the respect of co-workers and inmates.

Dr. Maloff focused his opinion on respondent's reaction to the decision by the warden of CIM to remove respondent from his assignment on the gun tower and return him to the general pool of correctional officers. Respondent told Dr. Maloff that he felt humiliated at having to work with correctional officers half his age and he was embarrassed and ashamed by the reassignment. Respondent added that he was an excellent employee and the

reassignment did not reflect that fact. Respondent also expressed concern about the overtime he would be forced to work after the reassignment and the additional stress he would experience from having to work with inmates. He was angry at what had happened.

Dr. Maloff was disappointed by the records of U.S. HealthWorks because they did not accurately describe the events that caused respondent's problems. He explained that as he reviewed the reports and findings in those records and summarized them in his report, he believed they were incorrect.

Dr. Maloff reviewed respondent's application for disability retirement. The application cited a generalized anxiety disorder as one of respondent's disabilities. Dr. Maloff disagreed. He pointed out that there was a big difference between having symptoms of anxiety and having the disorder. There were far more criteria that had to be satisfied before a diagnosis of anxiety disorder could be established. He found respondent had no history consistent with that diagnosis. He pointed out that there were no symptoms before February 2011.

Respondent's other claimed basis for disability was a pain disorder due to association with physical and emotional stressors. Again, Dr. Maloff found no evidence of this condition. He noted that the diagnosis required subjective complaints of pain without objective findings to support them. He pointed out there were no medical findings and no proper analysis in any of the medical reports to support that diagnosis.

In Dr. Maloff's opinion, there was no evidence to support a valid diagnosis of any mental illness that would render respondent incapacitated for the performance of his duties as a correctional officer. He recognized that respondent had been through some difficulties after the personnel action that changed his life, and he experienced anxiety, worry, sadness, and concerns about his ability to go back to work. In Dr. Maloff's view, that constituted an adjustment disorder that typically resolves within six months. It was not a chronic problem. He added that the adjustment disorder was complicated by respondent's occupational problem relating to his employer's personnel actions, and this caused respondent to struggle with the idea of returning to work.

Dr. Maloff believed that respondent felt that the workers' compensation process made matters worse for respondent but once he signed the application for disability retirement, he felt a sense of relief, as if he were unburdened.

In viewing all the evidence, Dr. Maloff did not find any psychiatric disorder from which respondent suffered that would prevent him from returning to work. In his view, respondent chose not to return to work. While respondent suffered from a temporary disability for about six months starting in March 2011, there was no mental illness that would stop him from doing anything in his life, including returning to work.

## *Respondent's Testimony*

14. Respondent testified that he did not return to work because he could not do the job because his humiliation and fear were intense. He expressed fear of having to work with inmates and humiliation at having his job reduced, and these feelings were magnified by having others learn that he had suffered psychological problems, as well. He pointed out that by the time he saw Dr. Maloff, he had not worked for three years.

## LEGAL CONCLUSIONS

1. 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.

2. Government Code section 21151, subdivision (a), provides:

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.

3. For respondent to receive a disability retirement, he must establish he is disabled and incapacitated for the performance of duty as a correctional officer for the California Institution for Men, California Department of Corrections and Rehabilitation. The phrase “incapacitated for the performance of duty” means “the substantial inability of the applicant to perform his usual duties.” (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876.) Further, respondent must establish the disability is presently disabling; a disability which is prospective and speculative does not satisfy the requirements of the Government Code. (*Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 863.)

The applicant in *Mansperger* was a game warden with peace officer status. His duties included patrolling specified areas to prevent violations and to apprehend violators; issuing warnings and serving citations; serving warrants and making arrests. He suffered injury to his right arm while arresting a suspect. There was evidence to the effect he could shoot a gun, drive a car, swim, row a boat (but with some difficulty), pick up a bucket of clams, pilot a boat, and apprehend a prisoner (with some difficulty). He could not lift heavy weights or carry the prisoner away. The court noted “although the need for physical arrests do occur in petitioner’s job, they are not a common occurrence for a fish and game warden.” (*Id.* at p. 877.) Similarly the need for him to lift a heavy object alone was determined to be a remote

occurrence. (*Ibid.*) In holding the applicant was not incapacitated for the performance of his duties, the court noted the activities he was unable to perform were not common occurrences and he could otherwise “substantially carry out the normal duties of a fish and game warden.” (*Id.* at p. 876.)

In *Hosford*, the court held that in determining whether an individual was substantially incapacitated from his “usual duties,” the court must look to the duties actually performed by the individual, and not exclusively at the job descriptions. In determining eligibility for a disability retirement, the actual and usual duties of the applicant must be the criteria upon which any impairment is judged. Generalized job descriptions and physical standards are not controlling nor are actual but infrequently performed duties to be considered.

4. Based upon Dr. Maloff’s opinion, respondent failed to establish that he is substantially incapacitated for the performance of his job as a correctional officer and entitled to disability benefits. Indeed, respondent offered no evidence to support a conclusion that he was incapacitated for the performance of his job. Respondent offered no medical opinions or records to support his application for a disability retirement. The only evidence of respondent’s treatment was Dr. Maloff’s summaries of the records. Those summaries are hearsay and could not support a finding of incapacity. Furthermore, Dr. Maloff’s report and testimony showed that to the extent that other mental health professionals found respondent to have suffered from a major depression, those opinions did not have any evidentiary support.

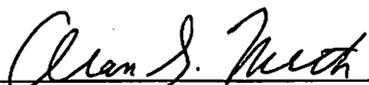
The evidence established that respondent suffered from symptoms that are best described as an adjustment disorder that were brought on by the actions of his employer more than four years ago, the symptoms were temporary, and they did not prevent respondent from performing the job duties of a correctional officer.

5. Cause for granting respondent’s application for disability retirement pursuant to Government Code sections 20026 and 2115 was not established.

#### ORDER

The application for disability retirement of William A. Johnson is denied.

DATED: December 22, 2015

  
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ALAN S. METH  
Administrative Law Judge  
Office of Administrative Hearings