ATTACHMENT E

THE PROPOSED DECISION

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

In the Matter of the Reinstatement from Industrial Disability Retirement of: STACY A. BRIDGES, Respondent, and CALIFORNIA HIGHAY PATROL, Respondent.	Case No. 2014-0407 OAH No. 2014120797

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Glendale on June 23, 2015, and in Fresno on September 30, 2015. Complainant Public Employees' Retirement System was represented by Elizabeth Yelland, Senior Staff Counsel. Respondent Stacy A. Bridges represented herself. No appearance was made on behalf of the California Highway Patrol.

On June 23, 2015, respondent failed to appear for the noticed hearing. Complainant's counsel contacted respondent by telephone and the hearing proceeded with respondent appearing by telephone. Complainant's counsel presented exhibits and the testimony of Edward Ritvo, M.D. The hearing was continued to allow respondent to make a personal appearance and present evidence. On September 30, 2015, respondent appeared at the hearing in Fresno and presented documentary and oral evidence.

Oral and documentary evidence having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. On or about August 6, 2014, Anthony Suine made and filed the Accusation, Case Number 2014-0407, in his official capacity as Chief of the Benefits Services Division, Board of Administration, California Public Employees' Retirement System, State of California (CalPERS).

2. From in or about 1999 through October 9, 2004, respondent Stacy Ann Bridges, also known as Stacy Ann Ramos, was employed by the California Highway Patrol of the State of California (CHP) as an administrative or clerical worker and then as a public safety dispatcher II in the Bakersfield office. She attended the CHP Academy in May 2003 to receive training to be a dispatcher. By virtue of said employment, respondent is a state safety member of CalPERS subject to the provisions of Government Code sections 21150 et seq.

3. On or about July7, 2004, respondent signed and filed a Disability Retirement Election Application with CalPERS. In her application, respondent wrote that she was disabled by anxiety, depression, and stress caused by the working environment at the CHP. She indicated that, due to her injury or illness, she could not perform her job as a public safety dispatcher II and that she was precluded from working in the Bakersfield office of the CHP.

4. On June 26, 2006, CalPERS approved respondent's application for disability retirement and she began receiving disability retirement benefits. Approximately eight years later, on January 23, 2014, after respondent underwent an independent medical evaluation, CalPERS determined that she is no longer disabled or incapacitated for the performance of her duties as a public safety dispatcher II for the CHP and proposed that she be reinstated to her former position. The issue in this matter is whether the competent medical evidence demonstrates that respondent is still substantially incapacitated for the performance of her usual duties as a public safety dispatcher II for the CHP

Disability Retirement

5. (A) On October 1, 2003, at the request of the workers compensation insurance carrier, respondent presented to Kathleen M. Murphy, Ph.D., a licensed clinical psychologist in Bakersfield, for a psychological evaluation to determine if her psychiatric injury was due to stress from her job at the CHP. Dr. Murphy conducted a clinical interview of respondent, obtained her histories, administered psychological tests, and reviewed records.

(B) Respondent, who was 29-years-old at the time of this evaluation, reported that her date of injury was June 13, 2003, and that she had not worked at her job since July 23, 2003. She reported having symptoms of stress consisting of

nausea, migraine headaches, and periodic skin rashes. Respondent stated that she had panic attacks, anxiety attacks while sleeping, difficulty sleeping, and problems with her concentration. With respect to the history of her injury, respondent provided an account of the difficulties that she encountered while working as a dispatcher at the CHP. She also reported that she and her fiancé had ended their engagement after she began having problems at work at the CHP. At the time of the psychological evaluation, respondent and her fiancé had reconciled and were engaged again.

(C) Following the psychological evaluation, Dr. Murphy prepared and issued a Psychological Evaluation in which she diagnosed respondent with panic disorder, somatization disorder, histrionic and passive-aggressive personality features, and relationship problems on the job. Dr. Murphy indicated that respondent felt that there was a hostile work environment at her job with the CHP.[1] Based on her review of the medical records, the results of the psychological testing, and the clinical interview, Dr. Murphy opined that the "predominant cause (over 51%)" of respondent's psychological injury was not due to industrial factors but to a combination of a pre-existing condition of depression and anxiety and respondent's tendency to convert her feelings of stress, depression, and anxiety into somatic complaints.

6. (A) On February 21, 2005, A. Rizkallah, D.O., filed a Physician's Report on Disability with CalPERS in which the physician diagnosed respondent with emotional trauma due to her work environment at the CHP. Dr. Rizkallah indicated that respondent's injury of anxiety, depression, and stress occurred in April 2003 due to a hostile work environment and was a work-related injury. Dr. Rizkallah opined that respondent was substantially incapacitated from performance of her usual duties as a public safety dispatcher.

(B) On December 16, 2005, Jae J. Kim, M.D., of Shafter, filed a Physician's Report on Disability in which the physician stated that respondent was substantially incapacitated at that time from performance of the usual duties of her position for CHP and the position for other California public agencies within CalPERS. Dr. Kim indicated that respondent had to avoid stress "created by her employer" and had to continue taking her medications. Dr. Kim stated respondent's stress, anxiety, and associated symptoms were caused by the work environment at her job.

7. (A) On or about May 22, 2006, respondent presented to Michael Barnett, M.D., a psychiatrist, for an independent medical evaluation at the request of

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[1] Dr. Murphy's Psychological Evaluation was admitted into evidence (Exh. C) as part of her case-in-chief. There are pages missing from the Psychological Evaluation, which was not material or determinative in this matter.

CalPERS. Dr. Barnett obtained respondent's histories and a summary of the course of her injury, conducted a mental status examination, and reviewed records.

(B) Respondent was now 31-years-old and had not worked as a public safety dispatcher II since July 22, 2003. She reported that she applied for disability retirement when the CHP did not offer her another position. Respondent also reported that, since she stopped working, she did not engage in any preferred activities that she used to do, avoided people, and became nervous even when she was around her friends and family members. She said she had trouble concentrating. Respondent appeared depressed and had a blunted affect.

(C) Dr. Barnett diagnosed respondent with depressive disorder, not otherwise specified; anxiety disorder, not otherwise specified; and personality disorder, not otherwise specified. In answering questions for CalPERS, Dr. Barnett opined that respondent was suffering from significant symptoms of depression, which included poor concentration, withdrawal, inability to enjoy things, and guilt about not working. Dr. Barnett opined that respondent's depression would impede her in the workplace. Dr. Barnett indicated that respondent was substantially incapacitated for performance of her usual duties as a public safety dispatcher for the CHP and for other public agencies in California. The psychiatrist further opined that respondent's disability was specifically related to her employment at the CHP and to her personality disorder, which was preexisting. Dr. Barnett concluded that, if she received therapy and medication treatment, respondent would be able to perform her usual duties as a public safety dispatcher for another public agency within six months to a year.

8. (A) On June 26, 2006, CalPERS approved respondent's application for disability retirement. CalPERS informed respondent that, based on her psychological condition of depression, she had been found substantially incapacitated for performance of her usual duties as a public safety dispatcher II with the CHP as well as for the usual duties of the same position for other California public agencies within CalPERS.

(B) On June 26, 2006, CalPERS also told respondent that she could not be employed as an active member in her position with the CHP without being reinstated from retirement, which required prior clearance by CalPERS. Respondent was also informed that she may be re-examined periodically to determine her qualification for reinstatement as long as she was under the minimum age for service retirement. Respondent was 31-years-old when her disability retirement application was approved.

(C) On July 26, 2006, CalPERS advised the CHP that respondent had been placed on the industrial disability retirement roll. Respondent's date of separation from the CHP was deemed to have been October 9, 2004, and the effective

date of her placement on the industrial disability retirement roll was October 10, 2004.

Post Disability Retirement

9. (A) On February 26, 2010, at the request of CalPERS, respondent presented to Stephan Simonian, M.D., a psychiatrist in Glendale, for an independent medical or psychiatric evaluation to determine her qualification for reinstatement from disability retirement. Dr. Simoniak interviewed respondent to obtain her histories, conducted a mental status examination, and reviewed medical records. Respondent was now 35-years-old. She was married with three children. She had not worked since 2003 and had been receiving disability retirement benefits for several years.

(B) During this independent medical evaluation, respondent described the work environment at her former job with the CHP as hostile and emotionally destructive. She stated that she developed hives, cried a lot, and became anxious and depressed. Respondent indicated that she saw a psychiatrist for one year and was prescribed Prozac and Xanax. Respondent told Dr. Simonian that she felt better but became anxious when she thought about going back to work.

(C) Based on his psychiatric evaluation, Dr. Simonian diagnosed respondent with major depression in partial remission and generalized anxiety disorder. Dr. Simonian opined that respondent remained substantially incapacitated for performance of her duties as a dispatcher for the CHP. The psychiatrist indicated that respondent had a traumatic experience while working at the CHP and would have difficulty in handling the volume of work and stress inherent in dealing with co-workers and the public as a dispatcher with the CHP. Dr. Simonian further opined that, based on the length of time that she had been unable to function in the dispatcher's job and the persistence of her symptoms, respondent's incapacity was permanent in nature.

10. (A) Three years later, on July 23, 2013, CalPERS informed respondent that it conducts re-examinations of members on disability retirement in accordance with the California Public Employees' Retirement Law and that her file was currently under review. Respondent was under the minimum age for voluntary retirement for service applicable to members of her class and was subject to a medical examination under Government Code section 21192 to determine if she is still incapacitated for performance of her duties as a public safety dispatcher for the CHP.

(B) CalPERS asked respondent to complete an Authorization to Disclose Protected Health Information (medical release) and to provide other information about her treating physicians. CalPERS told respondent that, if she provided insufficient information or did not submit a written response within 30 days,

arrangements would be made for her to be examined by an independent medical examiner. It was not established whether respondent submitted the medical release or provided the requested information to CalPERS.

(C) On November 27, 2013, CalPERS informed respondent that arrangements had been made for her to undergo an independent medical examination by Dr. Edward Ritvo, a psychiatrist located in Reseda. Respondent was advised that the purpose of the examination was to obtain medical information that CalPERS could use to determine whether respondent continued to be substantially incapacitated for her usual duties as a CHP dispatcher. CalPERS asked respondent to bring records with her to the examination. She was warned that, if she failed to attend the examination and CalPERS was unable to make a determination based on information in her file, then the pension portion of her disability retirement allowance could be discontinued.

11. (A) On December 12, 2013, respondent presented to Dr. Ritvo, a board certified psychiatrist, for an independent medical or psychiatric examination. Dr. Ritvo reviewed records, including information about respondent's duties as a public safety dispatcher; interviewed respondent and obtained her chief complaint and histories; and conducted a mental status examination. Afterwards, Dr. Ritvo prepared a report entitled, "Independent Medical Examination—Psychiatry," in which he reached diagnostic impressions and answered specific questions posed by CalPERS. Dr. Ritvo sent his report to CalPERS.

(B) With respect to her chief complaint, respondent stated to Dr. Ritvo that she had "[n]one of a psychiatric nature at this point." She denied having symptoms of anxiety disorder, depression, and mood disorder that were present in 2003 and 2004 when she worked as a public safety dispatcher at the CHP. Respondent stated that a hostile and stressful environment at her workplace led to her developing depression and physical symptoms. Respondent expressed concern that, if she were to return to her job at the CHP, she will experience a recurrence of the emotional distress. With respect to her activities of daily living, respondent reported, in part, that she was able to take care of her basic needs and the needs of her family. For the mental status examination, Dr. Ritvo found, in part, that respondent made good interpersonal contact, was pleasant and cooperative, was coherent and organized, and appeared alert and oriented. Her mood was appropriate. Dr. Ritvo found that respondent was able to communicate and did not show any signs or symptoms of a psychiatric condition.

(C) Based on his review and examination, Dr. Ritvo reached the diagnosis that respondent did not have a psychiatric disorder at this time, was experiencing moderate psychosocial stressors in her daily life, and had a normal level of functioning. Dr. Ritvo found nothing unusual in his examination of respondent. In answering CalPERS' questions, Dr. Ritvo stated that respondent did not have an established psychiatric diagnosis that precluded her from performing any of the duties

of a public safety dispatcher. Dr. Ritvo concluded that respondent is not substantially incapacitated from a psychiatric standpoint to perform the duties of a public safety dispatcher.

12. On January 23, 2014, CalPERS notified respondent that it had determined from a review of the medical reports that she is no longer substantially incapacitated from performing the job duties of a public safety dispatcher for the CHP. CalPERS informed respondent that, pursuant to Government Code section 21192, she will be reinstated to her former position at the CHP and that her actual re-entry to employment had to be arranged by her with the CHP. Respondent was also informed of her appeal rights.

13. In a letter dated February 19, 2014, respondent appealed the determination of CalPERS that she is no longer substantially incapacitated for performance of her duties as a CHP dispatcher and that she is to be reinstated from disability retirement to her former job. Respondent disagreed not only with CalPERS' determination but also the findings and diagnoses of Dr. Ritvo. She stated that, since she stopped working at the CHP, her "symptoms had subsided and [she] no longer need[ed] doctors' care or medications for symptoms [she] was suffering while employed." However, respondent explained that her symptoms and psychological disability were caused by the hostile work environment at the CHP dispatch center and she understood that those conditions still existed at her former job. Respondent complained that, from his independent medical examination, Dr. Ritvo cannot state whether she can handle working again at the CHP dispatch center because he did not ask her about the hostile work environment there. Respondent indicated that, since being notified that she was to return to her former job, she has begun to experience symptoms of stress and anxiety.

14. (A) At the hearing in this matter, respondent testified that she did not want to return to work at the CHP dispatch center in Bakersfield because the work environment there has not changed in the 10 years that she has been away from the job on disability retirement. Respondent suggested that she is still substantially incapacitated for performance of her duties as public safety dispatcher II for the CHP because she believes that her symptoms will return if she is required to return to work at the CHP dispatch center. Respondent conceded that she is doing fine now and does not have any symptoms of stress and anxiety. She indicated that her depression improved soon after she stopped working and she has not been depressed for several years now. Although she does not want to return to work at the CHP dispatch center in Bakersfield, respondent stated she could return to work as a dispatcher at a different agency.

(B) In her February 28, 2014 appeal letter, respondent wrote that she had seen her doctor, Dr. A. Rizkallah, who had treated her when she was approved for disability retirement, and that Dr. Rizkallah agreed that she is not able to return to work because she would develop "extreme depression, anxiety, and extreme stress."

She also stated that Dr. Rizkallah had referred her to a behavioral specialist or therapist for evaluation. In testifying, respondent stated that she would develop symptoms of stress and anxiety if she returned to work at the CHP dispatch center. However, respondent failed to present any medical evaluations or reports by Dr. Rizkallah or a therapist to substantiate that she is still substantially incapacitated by a psychological condition for performance of her usual duties as a public safety dispatcher II or her assertion that she would develop symptoms of stress, anxiety, or depression if she returned to work at her former position. Respondent's statements and testimony were not persuasive.

15. Respondent has not been employed since she last worked at the CHP over ten years ago. She is married and has three children at home in Shafter. Her spouse is training to be a correctional officer.

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Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds do not exist to grant respondent's appeal pursuant to Government Code sections 20026, 21150, 21156, 21192, and 21193, in that it was not established by the competent medical evidence that respondent is substantially disabled or incapacitated for performance of her usual job duties as a public safety dispatcher II for the California Highway Patrol, by a psychiatric or psychological condition, based on Findings 1 – 15 above.[2]

2. In general, a CalPERS member shall be retired for disability if he or she is incapacitated for the performance of duty and credited with five years of state service. (§ 21150, subd. (a).) A CalPERS member may make application for retirement for disability by filing an application with the board.[3] (§ 21152.) On receipt of an application for disability retirement from a member, CalPERS shall order a medical examination of the member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for performance of duty.

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[2] All references to sections are to sections of the Government Code within the Public Employees' Retirement Law.

[3] Board means the Board of Administration of the Public Employees' Retirement System. (§ 20021.) For purposes of this Proposed Decision, the board when referenced in applicable sections of the Public Employees' Retirement Law shall be referred to as CalPERS.

(§ 21154.) If the medical examination and other available information show to the satisfaction of CalPERS that the member is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, CalPERS shall immediately retire the member for disability, unless the member is qualified to be retired for service and applies therefor. (§ 21156.) "Disability" and "incapacity for performance of duty" as a basis of retirement mean disability of permanent or extended and uncertain duration, as determined by CalPERS, on the basis of competent medical evidence. (§ 20026.)

With respect to reinstatement from disability retirement, section 21192 provides, in pertinent part, that CalPERS may require any recipient of a disability retirement allowance, who is under the minimum age for voluntary retirement for service applicable to members of his or her class, to undergo a medical examination. The medical examination shall be made by a physician or surgeon appointed by CalPERS at the place of residence of the recipient or other place mutually agreed upon. Upon the basis of the medical examination, CalPERS shall determine whether the member is still incapacitated, physically or mentally, for duty in the state agency where the member was employed and in the position held by the member when retired for disability.

Section 21193 further provides, in pertinent part, that, if the determination pursuant to section 21192 is that the recipient of a disability retirement allowance is not so incapacitated for duty in the position held when retired for disability, his or her disability retirement allowance shall be cancelled immediately and he or she shall become a member of the Public Employees' Retirement System.[4] If the recipient was an employee of the state and is so determined to be not incapacitated for duty in the position held when retired for disability or in a position in the same class, he or she shall be reinstated, at his or her option, to that position.

3. In considering whether a person should be retired for disability, the courts have held that the phrase "incapacitated for the performance of duty" under section 21151 means substantial inability to perform one's usual duties. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 877.) The assertion of increased risk of further injury does not render a person presently disabled and demonstrates instead that the claimed disability is only prospective and speculative in nature and not presently in existence. (*Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 863.) The primary test is whether a person is substantially incapacitated from the performance of his or her usual job duties. (See *Mansperger v. Public Employees' Retirement System, supra.)*

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[4] When any person is reinstated from retirement, his or her retirement allowance shall be cancelled immediately, and he or she shall become a member of CalPERS as of the date of reinstatement. (§ 21200.)

4. In June 2006, respondent was retired on disability from her job as a public safety dispatcher II due to a psychological condition or depression. In late 2013, CalPERS had respondent re-evaluated in an independent medical examination. The medical evidence as presented by CalPERS demonstrated that respondent is no longer substantially incapacitated for the performance of her usual duties as a public safety dispatcher II for the CHP. Dr. Ritvo, a board certified psychiatrist, reviewed respondent's job duties as a public safety dispatcher and the medical records, examined and interviewed respondent to obtain her complaints and histories, and conducted a mental status examination. Respondent told the psychiatrist that she did not have a complaint of a psychiatric nature. Based on his reviews and examination, Dr. Ritvo determined that respondent does not have a psychiatric disorder, is not precluded or disabled from performing any of her job duties, and is not substantially incapacitated for the performance of her duties as a CHP public safety dispatcher.

For her part, respondent did not present any current or updated medical evidence to show that she continues to be disabled, or substantially incapacitated, for performance of her usual job duties as a public safety dispatcher II, due to a psychological or psychiatric condition, such as stress, anxiety, or depression. Respondent, in fact, has admitted that she no longer has any symptoms of stress and anxiety and has not suffered from depression for a number of years now. She also did not show that she is under the care of a medical professional or is taking any prescribed medications for a psychological condition. Her assertion that the work environment at the CHP has not changed and will cause her to develop stress-related symptoms again if she is required to be reinstated to her former position is speculative and does not establish that she is substantially incapacitated by a psychological condition at the present time.

Based on the competent medical evidence presented by CalPERS, which is set forth in Findings 10 – 12 above, respondent can no longer be considered substantially incapacitated for performance of her duties as a public safety dispatcher II for the CHP. Pursuant to section 21193, respondent must be reinstated from disability retirement to her former position with the state agency.

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Wherefore, the following Order is hereby made:

ORDER

1. The appeal of respondent Stacy A. Bridges, also known as Stacy A. Ramos, from the determination of the California Public Employee' Retirement System under Government Code sections 21192 and 21193, that she is not substantially incapacitated for performance of her usual job duties as a public safety dispatcher II for the California Highway Patrol, must be denied, based on Conclusions of Law 1 – 4 above, jointly and for all.

2. The Accusation, Case Number 2014-0407, and the determination of the California Public Employees' Retirement System are sustained. Respondent Stacy A. Bridges, also known as Stacy A. Ramos, shall be reinstated to her former job or position of a public safety dispatcher II with the California Highway Patrol.

Dated: October 28, 2015

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings