

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

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

In the Matter of the Statement of Issues  
(Application For Industrial Disability  
Retirement) of:

LORI A. LUECKFELD,

Respondent,

and

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, PELICAN BAY  
STATE PRISON,

Respondent.

Case No. 2014-0178

OAH No. 2015050145

**PROPOSED DECISION**

Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on March 15, 2016.

John Shipley, Staff Attorney, represented petitioner Anthony Suine, Chief, Benefit Services Division, California Public Employees' Retirement System (CalPERS).

Although properly served in accordance with the applicable provisions of the California Administrative Procedure Act, respondent Lori A. Lueckfeld (respondent Lueckfeld) did not appear. There was also no appearance by or on behalf of respondent California Department of Corrections and Rehabilitation, Pelican Bay State Prison (respondent CDCR). Accordingly, the matter was heard as a default pursuant to Government Code section 11520. Government Code section 11520, subdivision (a), grants an agency the discretion to act without taking evidence where, as here, the burden of proof is on respondent. In this matter, in accordance with CalPERS policy, complainant opted to present evidence in support of complainant's denial of respondent Lueckfeld's application for an industrial disability retirement.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED April 4 20 16  
*Rachelle Schrey*

The matter was submitted on March 15, 2016.

### ISSUE PRESENTED

Whether respondent Lueckfeld was substantially incapacitated for the performance of her usual duties as a Correctional Officer for respondent CDCR, at the time she applied for an industrial disability retirement.

### FACTUAL FINDINGS

1. Petitioner/complainant Anthony Suine filed the Statement of Issues solely in his official capacity as Chief of the CalPERS Benefits Services Division.
2. Respondent Lueckfeld was employed by respondent CDCR. At the time respondent Lueckfeld filed her application for retirement, she was employed as a Correctional Officer at Pelican Bay State Prison. By virtue of her employment, respondent Lueckfeld is a state safety member of CalPERS subject to Government Code section 21151.
3. On or about February 22, 2012, respondent Lueckfeld signed an application for industrial disability retirement. In filing the application, disability was claimed on the basis of a psychological condition.
4. CalPERS obtained medical reports concerning respondent Lueckfeld's claimed areas of injury from medical professionals. After review of the reports, CalPERS determined that respondent Lueckfeld was not permanently disabled or incapacitated for performance of the usual duties of a Correctional Officer at the time her application for industrial disability retirement was filed.
5. Respondent Lueckfeld was notified of CalPERS' determination and was advised of her appeal rights by a letter dated June 27, 2013.
6. Respondent Lueckfeld filed a timely appeal by letter dated July 15, 2013, and requested a hearing.

#### *Usual Duties for a Correctional Officer Employed by Respondent CDCR at Pelican Bay Prison*

7. Two documents were received in evidence that established the usual duties of a Correctional Officer at Pelican Bay Prison. The first is entitled "Physical Requirements of Position/Occupational Title," a CalPERS two-page document. The document was signed by a CDCR representative and respondent Lueckfeld on February 13, 2012, and February 20, 2012, respectively. The second document is entitled "Department of Corrections and Rehabilitation, Division of Adult Institutions, Correctional Officer, Essential Functions."

Both documents describe arduous physical tasks performed on an occasional to frequent basis. The tasks most relevant to respondent Lueckfeld's claim of psychological incapacity are the requirements that officers work in male or female institutions including those designated maximum security; exposure to risk from inmate behaviors, including verbal abuse/harassment; and exposure to very unpleasant situations.

### *Competent Medical Opinion*

#### **Complainant's Medical Opinion Evidence**

##### ***Andrea Bates, M.D.***

8. Respondent Lueckfeld was examined by independent medical examiner Andrea Bates, M.D., a board-certified psychiatrist, at the request of CalPERS. Dr. Bates examined respondent Lueckfeld on January 31, 2013, and prepared a report on February 7, 2013, that was received in evidence. Dr. Bates testified at the administrative hearing and explained the contents of her report.

9. Dr. Bates reviewed the cover letter sent to her by CalPERS outlining her assignment and the relevant legal standards. Dr. Bates also reviewed the documents describing respondent Lueckfeld's usual duties which are summarized above. She reviewed medical records and associated documents.

10. Dr. Bates obtained a history and description of respondent Lueckfeld's "present illness," by interviewing respondent Lueckfeld. Respondent Lueckfeld told Dr. Bates that she stopped work in 2009, and had started getting depression two or three years earlier. She stopped working because of what she described as a lot of sexual harassment from inmates and fellow correctional officers. This occurred on "several occasions." At the time that respondent Lueckfeld quit work, she was depressed, "really stressed out," and "having the panic." She saw her doctor and felt she could not return to work. In the last three years of her job, respondent Lueckfeld was out sick once or twice a week. She related that she "just fell apart physically and emotionally." Respondent Lueckfeld told Dr. Bates that she could not return to the prison world and endure harassment from inmates, coworkers and supervisors. She reported that officers had grabbed and kissed her and inmates had masturbated in front of her with impunity.

11. Respondent Lueckfeld described her mood at the time of Dr. Bates' evaluation as "not so good." She cried constantly and could not control it. She ate too much and had gained weight. She complained of insomnia, frequent nightmares, poor concentration, and fatigue. She experienced suicidal ideation at the time that she stopped working.

12. Respondent Lueckfeld was not taking any antidepressants, but she had been seeing a counselor for a little over two years. She felt better for a while and then relapsed into depression. She was having a difficult time leaving her house. Her only medications were Ambien which she took, as needed, for insomnia, and Synthroid.

13. Respondent Lueckfeld discussed her past psychiatric history that included a suicide attempt by cutting her wrists and grabbing a gun while “really drunk” two or three years earlier when contemplating suicide. Respondent Lueckfeld had been prescribed Prozac, but it made her feel like a zombie. Respondent Lueckfeld was not being actively treated by a psychiatrist and she had never been admitted to a psychiatric hospital.

14. Respondent Lueckfeld acknowledged that she was drinking alcohol in an excessive amount to attempt to deal with her depression. She had increased her cigarette smoking as well. She was trying to avoid getting “super drunk,” because it exacerbated her depression and she did not want her son to see her in that state. Past medical history included two bulging discs, knee problems, fibromyalgia, and removal of a goiter.

15. Dr. Bates performed a mental status examination of respondent Lueckfeld. The notable findings included crying at times, psychomotor retardation, low energy level, a depressed mood, and blunted affect. There was no significant evidence of cognitive impairment.

16. Dr. Bates’ review of medical records included the records of Dr. Mandelbaum, a board-certified psychiatrist, and the records of William G. Beegle, Licensed Clinical Social Worker. Dr. Bates reviewed a March 2012 Physician’s Report on Disability that included a diagnosis of Major Depression Recurrent, Severe, with symptoms of recurring nightmares, mood instabilities, increased anxiety, and avoidance of friends associated with work environment.

17. Dr. Bates’ Axis I diagnosis was Depressive Disorder, Not Otherwise Specified; Alcohol Abuse, rule out Alcohol Dependence. Dr. Bates summarized her conclusions including that while respondent Lueckfeld would experience some stress upon returning to her job, she is not disabled from doing so. Dr. Bates opined that respondent Lueckfeld would benefit from antidepressant treatment, including psychotherapy, and decreased alcohol consumption. With treatment, respondent’s symptoms of depression and anxiety would subside. Dr. Bates concluded that respondent Lueckfeld is not incapacitated for the usual and customary duties of a correctional officer.

### **Respondent’s Medical Opinion Evidence**

18. As noted above, respondent Lueckfeld did not appear at the administrative hearing. Thus, no competent medical evidence was received in support of her application for industrial disability retirement.

## **LEGAL CONCLUSIONS**

1. An applicant for retirement benefits has the burden of proof to establish a right to the entitlement absent a statutory provision to the contrary. (*Greatorex v. Board of Administration* (1979) 91 Cal.App.3d 57.) The party asserting the affirmative at an

administrative hearing has the burden of proof including both the initial burden of going forward and the burden of persuasion by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051 fn.5, citing *So. Cal. Jockey Club v Cal. etc. Racing Bd.* (1950) 36 Cal.2d 167, 177.)

2. Government Code section 20026 reads, in pertinent 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. Incapacity for performance of duty means the substantial inability to perform usual duties. (*Mansperger v Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 876.) In *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, at page 860, the court rejected contentions that usual duties are to be decided exclusively by State Personnel Board job descriptions or a written description of typical physical demands. The proper standard is the actual demands of the job. (See also, *Thelander v. City of El Monte* (1983) 147 Cal.App.3d 736.) The ability to substantially perform the usual job duties, though painful or difficult, does not constitute permanent incapacity. (*Hosford, supra*, 77 Cal.App.3d 854, at p. 862.)

4. Respondent Lueckfeld had the burden of producing evidence to support her application for industrial disability retirement, including the burden to produce “competent medical opinion” that her physical condition rendered her substantially incapacitated for the performance of her usual duties. Respondent Lueckfeld did not sustain her burden. CalPERS presented competent medical opinion evidence establishing that respondent Lueckfeld is not substantially incapacitated for the performance of her usual duties as a Correctional Officer at Pelican Bay State Prison by reason of her claimed psychological injuries. Therefore, respondent Lueckfeld’s application must be denied.

ORDER

Respondent Lueckfeld’s appeal from CalPERS’ determination that she was not permanently disabled or incapacitated for the performance of her usual duties as a Correctional Officer with respondent CDCR Pelican Bay State Prison at the time that her application for industrial disability retirement was filed is DENIED.

Dated: March 29, 2016

DocuSigned by:  
*Karl Engeman*  
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KARL S. ENGEMAN  
Administrative Law Judge  
Office of Administrative Hearings