

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

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

In the Matter of the Involuntary  
Reinstatement from Industrial Disability  
Retirement of:

PAUL D. WALKER,

Respondent,

and

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

Respondent.

Case No. 2015-0518

OAH No. 2016020628

**PROPOSED DECISION**

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on July 12, 2016, in Santa Rosa, California.

Senior Staff Attorney Austa Wakily represented the California Public Employees' Retirement System (CalPERS).

Respondent Paul D. Walker was present at the hearing and represented himself.

There was no appearance by or on behalf of Pelican Bay State Prison, Department of Corrections and Rehabilitation (CDCR).

The matter was submitted for decision on July 12, 2016.

**CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM**

FILED July 27, 2016

Shirley D. [Signature]

## FACTUAL FINDINGS

1. Respondent Paul D. Walker was employed by the CDCR as a correctional officer at Pelican Bay State Prison. As such, respondent is a state safety member of CalPERS covered by Government Code section 21151, which provides that any state safety member "incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability."

2. As a correctional officer, respondent's duties included: walk occasionally to continuously; stand occasionally to continuously; defend himself against inmates; disarm, subdue, and apply restraints to an inmate; run occasionally in an all-out effort in response to alarms or serious incidents; climb occasionally to frequently; ascend/descend a series of steps/stairs or ladders as well as climb onto bunk-beds; crawl and crouch occasionally to perform searches; lift and carry continuously to frequently 20 to 50 pounds; and frequently push and pull while opening and closing gates and cell doors.

3. On October 12, 2010, respondent submitted an application for disability retirement, identifying his disability as "excessive pain in both feet. Plantar Fasciitis, bone spurs, Achilles Tendon length." He claimed an injury date of April 14, 2008.

4. On July 19, 2011, Michael C. Karason, D.P.M., performed an independent medical examination of respondent. Dr. Karason concluded that respondent suffered from "chronic regional pain syndrome, reflex sympathetic dystrophy syndrome, neuropathy, and chronic plantar fasciitis, bilaterally" and that he had met maximum medical improvement of his condition. Dr. Karason concluded that respondent was unable to ambulate more than 50 feet, unable to stand on his feet without constant shifting of his weight for more than one minute, unable to walk stairs without using handrails, and would be unable to have physical contact with prisoners and maintain his gait. Dr. Karason added that his symptoms interfered with his sleep and caused depression. In addition, Dr. Karason noted that his use of narcotics for pain management causes disorientation at times. Dr. Karason opined that respondent was substantially incapacitated from performance of his duties as a correctional officer, that his condition was permanent, and that his condition was industrially related and not due to any non-industrial or pre-existing conditions.

5. On November 17, 2011, CalPERS approved respondent's application, effective immediately, based upon his orthopedic (feet) condition. Because respondent was born in 1972, he is under 50, which is the minimum age for voluntary service retirement for a correctional officer.

6. In a letter dated August 12, 2014, CalPERS notified respondent that it would be reexamining him to determine his continuing eligibility to receive disability retirement.

REMOVED ON JANUARY 22, 2015  
On January 22, 2015, John D. Hollander, D.P.M., performed an independent medical evaluation of respondent, at the request of CalPERS. Dr. Hollander reviewed medical records, interviewed respondent, conducted a physical examination, and authored a

report. No new diagnostic tests were performed. In his discussion of respondent's medical records, Dr. Hollander expressed skepticism at the diagnoses made by previous physicians and noted that, in his opinion, respondent's subjective complaints did not correspond with the objective medical evidence. Dr. Hollander was asked by CalPERS to include in his report a discussion of whether there are any specific job duties that respondent is unable to perform because of his orthopedic condition. He answered as follows:

It is difficult for me to answer this question given the confusion regarding the diagnoses. To date there has been no objective evidence to support his subjective statements of pain. An MRI, nerve conduction studies, vascular evaluations and radiographs have all been essentially equivocal. In fact, the calf atrophy has disappeared with ongoing use and ambulatory challenge. Subjective statements of pain perhaps were somaticized, according to the psychological evaluation. This may be due to a mental condition, which is out of my realm of expertise. Please note that based on my physical examination and review of the records I feel there have been subjective statements of pain with no objective evidence to support them. The applicant's symptoms and claims of pain have been inconsistent. His complaints of neurogenically mediated pain have proven to be a nonissue. He does not have CRPS or RSD. He does not have vascular issues, and from what I can discern he has no orthopedic issues that would preclude him from performing his job duties as a guard. It is also interesting to note that once his case was settled for medical retirement his symptoms miraculously improved and became less of an issue and the focus became more regarding his newly diagnosed depressive condition.

Dr. Hollander further concluded that, "In this point in time I cannot find incapacity based on objective evidence. There are only subjective statements of pain, as indicated above." Dr. Hollander added:

Please note that I feel that further diagnostics could be entertained. As mentioned early in this report, a triphasic limited lower extremity bone scan could be performed. Should this be considered negative, then this would provide further evidence against contusive heel pain which may be a consideration given the applicant's symptoms. Rarely did this individual complain of poststatic dyskinesia and/or pain upon arising, which would be more typical of plantar fascial type symptoms. Given this, I feel it is imperative that a triphasic bone scan be performed to rule this out. As stated, if this is positive, then I feel this individual should be considered medically

disabled as purported based on his subjective statements. This would at least provide some objective evidence regarding the above. Also, consideration should be given to allow provision for a rheumatological workup to rule out seronegative or seropositive spondyloarthropathy. As mentioned previously, individuals can have unremitting heel pain from a nonindustrial cause such as psoriatic arthritis, rheumatoid arthritis, ankylosing spondylitis, etc. Again, should these lab tests be negative, then I feel there would be no supporting evidence to consider this individual to be industrially compromised.

8. In a letter dated March 3, 2015, CalPERS notified respondent that he was no longer substantially incapacitated from performing the job duties of a correctional officer for the CDCR at Pelican Bay State Prison and would be reinstated. Respondent filed a timely notice of appeal.

9. CalPERS filed this Accusation on January 21, 2016. Per the Accusation, the appeal is "limited to the issue of whether respondent Walker is disabled or incapacitated from performance of his usual job duties."

10. Respondent testified that he began to experience pain in his feet beginning in late 2007. During a typical shift at the prison, he spent three to four hours walking on hard surfaces and climbing up and down stairs. He would come home at the end of his shift and could barely walk. After resting, he would have difficulty standing up again. He sought medical treatment and was diagnosed as having suffered cumulative trauma to his feet as a result of his work. He had developed bone spurs and experienced severe pain in the arch and heel area of both feet. Surgery was performed on his left foot on December 24, 2009, followed by physical therapy. The surgery was unsuccessful and his condition worsened. Because of this, no surgery was performed on his right foot. Since this time, the only treatment he has received is custom orthotic inserts for his shoes and a pain control regimen. Respondent continues to have pain in both feet and cannot stand or walk for long periods and cannot climb stairs without relying on the handrails. He disagrees with Dr. Hollander's assessment that his symptoms have improved and stated that his condition has in fact worsened since he retired. He continues to see his primary care physician monthly for management of his pain medications.

11. Dr. Hollander's report was not persuasive in establishing that respondent is no longer disabled. Dr. Hollander recommended that further diagnostic testing be performed and acknowledged that the results could in fact indicate disability. This testing was not performed. Furthermore, Dr. Hollander does not explain how respondent's condition would have improved since he was medically retired, such that he would now be able to perform his job duties. Instead, he appears to dispute the findings of the previous independent medical examiner and to suggest that respondent is malingering or exaggerating his complaints.

12. CalPERS did not present sufficient evidence to establish that respondent is no longer incapacitated from performing his usual duties as a correctional officer at Pelican Bay State Prison. The request for involuntary reinstatement should be denied.

#### LEGAL CONCLUSIONS

1. Pursuant to Government Code section 21192, CalPERS may re-evaluate members receiving disability retirement benefits who are under the minimum age for service retirement and order them to undergo a medical examination. Pursuant to Government Code section 21193, if the recipient of disability retirement is determined to be no longer substantially incapacitated for duty in his or her former position, his or her disability retirement shall be canceled.

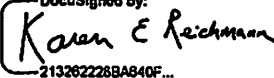
2. CalPERS has the burden of proving that respondent is no longer disabled. (*Harmon v. Board of Retirement of San Mateo County* (1976) 62 Cal.App.3d 689, 691.)

3. As set forth in Finding 12, CalPERS has not met its burden of establishing through competent medical evidence that respondent is no longer substantially incapacitated from performing his usual duties as a correctional officer for the CDCR. It was not established that his condition has improved since he was medically retired or that he is capable of engaging in activities that are inconsistent with his claim of substantial incapacity from performing the duties of a correctional officer. Consequently, the request for involuntary reinstatement should be denied.

#### ORDER

Respondent Paul D. Walker's appeal is GRANTED. The request of the California Public Employees' Retirement System to involuntarily reinstate respondent from disability retirement is DENIED.

DATED: July 22, 2016

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KAREN REICHMANN  
Administrative Law Judge  
Office of Administrative Hearings