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:	Case No. 2014-0412
THEODORE R. PARRISH,	OAH No. 2016030483
Respondent,	
and	
IRONWOOD STATE PRISON, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,	
Respondent.	

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 17, 2016, in Palm Springs, California.

Rory Coffey, Senior Staff Attorney, represented petitioner, Anthony Suine, Chief, Benefit Services Division, California Public Employees' Retirement System, State of California (CalPERS).

Thomas Hampton, O'Mara & Hampton, represented respondent Theodore Parrish, who was present throughout the hearing.

No appearance was made by or on behalf of respondent Ironwood State Prison, California Department of Corrections and Rehabilitation (Ironwood). Having established satisfactory service, the matter proceeded against Ironwood as a default pursuant to Government Code section 11520.

The matter was submitted on August 17, 2016.

ISSUE

Is Mr. Parrish, who was granted a disability retirement in 2011, now recovered from his psychological condition such that he is no longer permanently disabled or incapacitated from performing the usual and customary duties of a correctional officer?

PROTECTIVE ORDER

The information contained in the medical records in this matter is subject to a protective order. Exhibits 11C, 12C, 1R-24R, inclusive, 26R, and 27R were admitted into evidence and contain medical, psychiatric and psychological information. It is impractical to redact the information from these exhibits. To protect privacy and the confidential personal information from inappropriate disclosure, Exhibits 11C, 12C, 1R-24R, inclusive, 26R, 27R are ordered sealed. This sealing order governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517, may review the documents subject to this order, provided that such documents are protected from release to the public. No court reporter or transcription service shall transcribe the information contained in the records. Given the confidential nature of the information contained in this proposed decision, the parties may wish to redact those portions that summarize the medical, psychiatric and psychological information before releasing the decision to the public.

CASE SUMMARY

In 2008, after a riot at Ironwood, rumors spread that Mr. Parrish had left his colleagues and he was harassed at work and home. The harassment caused him to seek medical care and he was taken off work by his physician. In 2011 CalPERS approved his request for an industrial disability retirement. Thereafter CalPERS had Mr. Parrish re-evaluated in 2013 and determined that Mr. Parrish was no longer disabled. CalPERS requested that Mr. Parrish be ordered to return to work. Numerous medical records were introduced and psychiatric experts testified. The competent medical evidence demonstrated that Mr. Parrish remains incapacitated from performing the usual and customary duties of a correctional officer and he is unable to return to work. Mr. Parrish shall remain on industrial disability retirement.

//

//

FACTUAL FINDINGS

Preliminary Matters

1. Mr. Parrish was employed as a correctional officer at Ironwood. By reason of his employment, Mr. Parrish was a state safety member of CalPERS.

2. Mr. Parrish worked at Ironwood without incident until October 24, 2008, when a riot occurred. There are several accounts of the riot written in the reports and relayed by Mr. Parrish during his testimony, but essentially, Mr. Parrish was in one of the dining rooms with two fellow officers when he went to check on the other dining hall and discovered no officers present. As this was unusual, he went to the kitchen to locate the officers and eventually found them in the yard putting down a riot. He assisted and heard a radio call of an assault on staff members. Several officers ran to the kitchen through the back door where the riot spilled over into the dining hall and during this time the two officers with whom Mr. Parrish had been in the first dining hall were attacked and injured by inmates. Thereafter, rumors quickly spread that Mr. Parrish had left his two colleagues during the riot and Mr. Parrish began receiving threats and harassment at the workplace because of these false rumors, and received anonymous calls at his home. Eventually, even the inmates were aware of the rumors and Mr. Parrish learned from an inmate that he was referred to as "stand alone," a term that means no officers will come to his aid in the event he is attacked by inmates. Mr. Parrish sought medical treatment because of the stress he was enduring.

3. On August 2, 2010, CalPERS received Mr. Parrish's application for disability retirement. In the disability information section, Mr. Parrish identified his disability as "04/02/2009 - occupational stress causing injury to psyche." He identified Stephen Signer, M.D., as his treating physician and provided medical records.

4. On March 4, 2011, Stephen Signer, M.D., completed a CalPERS Physician's Report on Disability, noting Mr. Parrish's subjective complaints of anxiety and depression. Dr. Signer diagnosed Mr. Parrish with posttraumatic stress disorder and depression major episode, single, and opined that Mr. Parrish was substantially incapacitated from performing all of his duties. Dr. Signer opined that the incapacity was permanent, and noted that he had reviewed the job description and physical requirements of the job in arriving at his opinions.

5. On March 29, 2011, CalPERS notified Mr. Parrish that it had approved his application for industrial disability retirement, finding him "substantially incapacitated from the performance of your usual duties as a correctional officer . . . based upon your psychological condition." CalPERS advised that his industrial disability retirement was effective immediately, unless he remained on the payroll to the extent of his unused sick leave. Thereafter, Mr. Parrish was retired for disability effective August 7, 2011. CalPERS relied upon Dr. Signer's opinions and diagnoses in rendering its decision and did not send Mr. Parrish for any additional evaluations.

6. Provisions of the Government Code authorize CalPERS to re-evaluate members who are under the minimum age for voluntary retirement to determine if they remain eligible for a disability retirement. If CalPERS determines that the member is no longer incapacitated or permanently disabled, it may cancel the disability retirement allowance and seek to have the member reinstated.

7. On January 13, 2014, CalPERS notified Mr. Parrish that; after completing its reevaluation of him, it had determined that he was no longer substantially incapacitated from performing the usual and customary duties of a correctional officer at Ironwood. CalPERS advised Mr. Parrish to contact the personnel office to arrange his return to employment. Mr. Parrish timely appealed that determination and this hearing ensued.

Claimant's Psychological Evaluations by Dr. De Voss

8. Gary De Voss, Ph.D., a licensed psychologist, Agreed Medical Evaluator and Qualified Medical Evaluator, performed a Qualified Medical Evaluation (QME) on July 9, 2009. He examined Mr. Parrish, administered psychological tests, and reviewed medical records. He took a history of the incident from Mr. Parrish, including the subsequent backlash he received from his colleagues. Dr. De Voss performed an extensive review of the medical records that he documented in his report. In 2009 Mr. Parrish underwent a psychological evaluation with Kenneth Garrett, Ph.D., and was seen by Leonel Rodriguez, M.D.[1] Mr. Parrish was diagnosed with major depressive disorder and generalized anxiety and received psychotherapy and medication, including Zoloft and Xanax. Mr. Parrish reported to Dr. De Voss that he was having difficulties with sleep, going out in public, and had anxiety. Dr. De Voss wrote, "With regard to [posttraumatic stress disorder] symptomatology, [Mr. Parrish] reports that going to the prison is hard for him, and produces feelings of dread. He reported that how he is treated at work is on his mind all the time, and he tends to go in when no one is there to avoid others." Mr. Parrish reported that his children running around makes him uptight, but he is concentrating on not being short tempered with them by going into his room. Mr. Parrish complained of sexual problems and stated his symptoms worsened following the riot and that his symptoms fluctuated.

Dr. De Voss noted that Mr. Parrish appeared upset, worried, and demoralized and his speech was consistent with that mental state. There was no evidence of dishonesty or that he was attempting to manipulate Dr. De Voss. Mr. Parrish showed good insight and adequate judgment. On testing, Mr. Parrish's overall profile was consistent with posttraumatic stress disorder and depression, situationally activated. His scores on the psychological testing administered indicated a mildly depressed mood, and the test results ruled out exaggeration. Dr. De Voss rendered the following diagnosis: Axis I: posttraumatic stress disorder with depressive/anxious features; Axis II: no personality disorder indicated; Axis III: per the medical record; Axis IV: psychosocial and environmental problems; problems with primary support group-moderate; problems related to social environment-moderate; educational

[1] Records from these providers were not introduced although they were summarized in the reports.

problems-minimal; occupational problems-moderate/severe; housing problems-minimal; economic problems-mild; problems with access to health care services-minimal; problems related to interaction with the legal system/crime-minimal; other psychosocial and environmental problems-minimal; Axis V: GAF 57: moderate.

In the "final discussion" portion of his report, Dr. De Voss summarized the incident, noting that after the riot, a rumor started that Mr. Parrish had run away when the riot erupted. The rumor spread "among the 700 to 800 officers and essentially ran out of control over a period of time until April 2, 2009, when Mr. Parrish could no longer tolerate the constant harassment he was receiving, and asked for an appointment with his regular physician, who took him off work. Although both the correctional officers who were assaulted backed [Mr. Parrish] up, because clearly he did not run away at all, but was doing his job correctly, rumors continued to spread not only at the prison, but in the community as well." Mr. Parrish was told by colleagues that if there was an incident at the prison, they would not cover his back and he "began to worry constantly that the necessary camaraderie among correctional officers was no longer present with respect to him."

Dr. De Voss noted that Mr. Parrish had been unable to work since April 2, 2009, at his usual and customary job due to what his general practitioner called "work related anxiety," and that he was diagnosed with depression and anxiety. Dr. De Voss opined that "from the history, records provided, psychological testing and the result of [Dr. De Voss's] evaluation, Mr. Parrish is suffering from an industrially related condition, namely [posttraumatic stress disorder], which would not have occurred absent his industrial injury. He has shown a *cumulative worsening* since April 2009, and being off work with a medical leave has not been a relief for him." (Emphasis in original.) Dr. De Voss determined that Mr. Parrish was a credible historian and that the "predominant precipitant for his current destabilized psychological condition" was the riot and the "subsequent problems with collegial tension and recrimination" leading to his inability to work.

Dr. De Voss noted that Mr. Parrish's symptoms would not have occurred absent the riot and subsequent events that culminated in an industrial injury to his psyche resulting in a psychiatric condition that recently required the need for psychiatric medication management and cognitive behavioral therapy. Dr. De Voss opined that Mr. Parrish was not yet permanent and stationary on a psychological basis and was in need of treatment. Dr. De Voss noted the psychological consistency among the multiple specialists who treated Mr. Parrish and that the objective factors documented and supported his opinion. Dr. De Voss noted that a prognosis for Mr. Parrish, if Dr. De Voss's recommendations were immediately implemented, was that he could achieve maximum medical improvement within three to five months from the date he started a psychiatric medication management regimen. Dr. De Voss recommended a referral to a board-certified psychiatrist with an expertise in treating posttraumatic stress disorder through medication with concurrent cognitive behavioral therapy directed specifically at providing Mr. Parrish the specific tools to stop negative thinking patterns and provide him with problem-solving strategies to be used as he returned to work. Dr. De Voss cautioned against forcing Mr. Parrish to return to work too early as this could cause him to relapse.

9. On September 16, 2010, Dr. De Voss re-examined Mr. Parrish, performed additional testing and reviewed medical records. Dr. De Voss noted that psychological testing indicated a significant worsening of Mr. Parrish's condition, "specifically the indicators showed a movement toward dangerous levels of persecution bordering on paranoia, an increase in anxiety, [which was an] indication that the current treatment that has been provided to Mr. Parrish is not showing a response." Other testing demonstrated a severe level of depressive symptoms. Dr. De Voss opined that Mr. Parrish met the diagnostic criteria for the following mental disorders: Axis I: Posttraumatic stress disorder with depressive/anxious features; Axis II: No personality disorder indicated; Axis III: Per the medical records; Axis IV: Psychosocial and environmental problems; problems with primary support group-moderate; problems related to social environment-moderate to severe; educational problems-minimal; occupational problems-severe; housing problems-minimal; economic problems-mild; problems with access to health care services-minimal; problems related to interaction with the legal system/crime-minimal; other psychosocial and environmental problems-minimal; Axis V: GAF 52, moderate. Several of Mr. Parrish's Axis IV symptoms had worsened since 2009. Attached to Dr. De Voss's report were the results of the psychological testing performed and documentation that there had been a 70 percent worsening of Mr. Parrish's posttraumatic stress disorder/depression from July 2009 to September 2010.

Dr. De Voss noted that the treatment Mr. Parrish received in the past year was "far below the threshold of what Mr. Parrish needs in order to reach a level of maximum medical improvement. Therefore the aggressive treatment I initially recommended [in my 2009 report] should be instituted immediately, while at this time Mr. Parrish remains totally temporarily disabled on a psychological basis until he has had approximately 90 days of aggressive psychological treatment, that is, up to two visits per week."

Dr. De Voss noted that Mr. Parrish would benefit most from twice-weekly cognitive behavioral therapy. Dr. De Voss opined that Mr. Parrish's psychiatric medication management should continue, but he would alert Dr. Signerto the fact that Mr. Parrish's condition has worsened since the first time Dr. De Voss evaluated him. Dr. De Voss recommended that, unless there were side effects, Dr. Signer should pursue "a much more aggressive psychiatric medication regimen than my reading of his chart notes indicates is being prescribed now." Dr. De Voss also noted that it was important that Mr. Parrish's cognitive/behavioral treatment be implemented immediately, because Dr. De Voss anticipated that with the type and frequency of the treatment recommended, Mr. Parrish would be able to return to work after 90 days of cognitive behavioral treatment had been consummated.

Dr. Signer's Medical Records

10. Dr. Signer has been treating Mr. Parrish consistently since 2010. On January 8, 2010, Dr. Signer conducted an initial psychiatric consultation regarding Mr. Parrish's worker's compensation benefits and authored a report on April 29, 2010. Dr. Signer took a

history noting that following the riot there was a backlash and Mr. Parrish was blackballed by his colleagues. Because of this, his colleagues were slow to respond to his request for assistance and he was identified as a "walk alone," a term meaning he was on his own in the event of an incident in the prison. Mr. Parrish was written up by his lieutenant for an unrelated incident which he felt was due to the backlash from the riot. Mr. Parrish tried to speak to the warden about what was happening but received no assistance from her. Mr. Parrish "continued to try to work from October 2008 to April 2009, but felt that every day things got worse and worse and he could only take so much."

Mr. Parrish reported that the incident "was on his mind and he had trouble shaking it and this led to some problems with his wife and children." Mr. Parrish reported a decreased appetite, inability to sleep, decreased energy, interest, and pleasure. He socialized less and had some bad dreams but no nightmares. Mr. Parrish "felt at his wits end" at work. He "was not sure of his state and he worried over his own actions." Mr. Parrish initially treated with his personal physician who referred him to a therapist who started treatment on a decreasing schedule. His personal physician prescribed sertraline that Mr. Parrish took until July 2009.

Dr. Signer performed a mental status examination and noted that Mr. Parrish's mood was mildly depressed. He was not suicidal and there "was no disturbance of thought form or content or disorder of perception." Dr. Signer reviewed the available records. His diagnostic impression was Axis I: Depression, major, single, mild to moderate, without psychotic features, posttraumatic stress disorder, mild; Axis II: Avoidant features; Axis III: Nil; Axis IV: Assault in riot, shunning by colleagues; and Axis V: GAF 60. Dr. Signer noted clear symptoms of a major depressive episode. Mr. Parrish had some variable effect with the sertraline prescribed. Dr. Signer wrote, "It should be noted that the average dose of this medication is 75 to 100 mg and a trial at a higher dosage would certainly be worthwhile. I therefore prescribed sertraline 150 mg in addition to trazodone 100 milligrams 1 to 2 at bedtime to aid with sleep." Dr. Signer intended to follow up with Mr. Parrish in one month.

11. Dr. Signer next saw Mr. Parrish on February 10, 2010. He had followed the instructions to increase his dose of sertraline to 150 mg but then went back to the lower level. He reported feeling some benefit with the trazodone. Mr. Parrish reported some decrease in appetite, sleep difficulties, low energy and low motivation. His affect was somewhat flattened with slight decrease in gestures. Dr. Signer left the dose of sertraline at 100 mg, changed the trazodone to mirtazapine "although it was noted that he took 15 mg h.s. and this is a more robust antidepressant than trazodone" and noted that Mr. Parrish could still use trazodone as needed for sleep.

12. Dr. Signer saw Mr. Parrish on March 12, 2010. He was upset, reporting receiving calls from the prison stating that he was a runner and they would not have his back. He had hired a lawyer to stop the harassment. Mr. Parrish reported feeling worse due to the environment. Dr. Signer continued him on mirtazapine 15 mg and sertraline 100 mg and added clonazepam 1 mg h.s. to aid with sleep and decrease some of his anxiety symptoms.

13. Dr. Signer saw Mr. Parrish again on April 23, 2010. Mr. Parrish described the increasing harassment he was receiving, including receiving anonymous calls at home. Mr. Parrish told Dr. Signer that he "feels tired of the entire situation, believing his life will be in jeopardy." Mr. Parrish reported that he "worries that he will explode but knows that this will not solve any issues." Dr. Signer discussed various options with Mr. Parrish but he was "considering a possible permanent and stationary rating with future medical care because he did not see a realistic return to work." Dr. Signer wrote that Mr. Parrish would continue with mirtazapine 15 mg and sertraline 100 mg. Mr. Parrish was not using clonazepam at that time. Dr. Signer would see Mr. Parrish in six weeks and Mr. Parrish remained temporarily totally disabled.

14. Dr. Signer next saw Mr. Parrish on June 11, 2010. He felt somewhat better but still received random telephone calls. Mr. Parrish felt stuck in place, not having many options returning to his employment locally or elsewhere in corrections. He worried the allegations would follow him wherever he went. He slept fairly well but was still preoccupied. Dr. Signer increased sertraline to 150 mg. The mirtazapine remained at 15 mg h.s. Mr. Parrish remained temporarily totally disabled.

15. Mr. Parrish was next seen on August 13, 2010. He felt more nervous and had received more harassing phone calls. He would be consulting a psychologist on September 9, 2010. Dr. Signer discussed various employment options with Mr. Parrish. He had not used the sertraline or mirtazapine in three to four weeks. Dr. Signer noted that it would be important to discuss the future changes in medication with him or another treating physician. Dr. Signer elected not to restart the medication; however, because of Mr. Parrish's anxiety, Dr. Signer gave him a trial of buspirone started at 10 mg b.i.d. and advancing to possibly 20 mg b.i.d. Mr. Parrish remained temporarily totally disabled.

16. Dr. Signer saw Mr. Parrish again on September 24, 2010. He had treated with Dr. De Voss who had consulted with Dr. Signer. Dr. De Voss noted a Beck Depression Inventory of 35; however, Mr. Parrish did not have any suicidal ideation. Dr. De Voss did not recommend a return to the workplace and Dr. Signer discussed this with Mr. Parrish. Mr. Parrish expressed that he just wanted things to go away and Dr. Signer advised him that his somewhat passive attitude would not fully help him; he needed to make an active decision. Mr. Parrish slept for three or four hours at a time and his mood was fair. Dr. Signer increased the buspirone from 10 mg b.i.d. to 15 mg b.i.d.

17. On November 18, 2010, Dr. Signer saw Mr. Parrish who had consulted with Dr. De Voss for a second time. Mr. Parrish wanted to move on and possibly retire. He felt angry and upset over the phone calls, receiving multiple calls on the one year anniversary of the riot. He reported being upset because he would improve somewhat and then relapse when he received this type of harassment. Dr. Signer discussed employment options with Mr. Parrish. Mr. Parrish reported not taking his medications because he tried to "'keep cool'" but he realized this made him feel somewhat more depressed. Dr. Signer noted that Mr. Parrish was somewhat more anxious and edgy with a slight tremor during the examination. Dr. Signer restarted sertraline 100 mg and buspirone 10 mg b.i.d. He

recommended counseling once per week for 12 sessions. Dr. Signer reviewed the available records and noted that Mr. Parrish remained temporarily totally disabled. Dr. Signer opined that the worsening of Mr. Parrish's state was "most likely due to his noncompliance with medication and those are restarted." Dr. Signer "fully and heartily endorse[d] the recommendations of Dr. De Voss regarding [Mr. Parrish's] need for ongoing and continued counseling and psychotherapy."

18. Mr. Parrish was seen again by Dr. Signer on December 17, 2010. He felt somewhat relieved as he was moving towards his decision. He reported receiving continued telephone calls to his home, but these were not as bothersome as he felt that he clearly was not able to return to work as a corrections officer. Mr. Parrish felt somewhat better from the support he received from his wife and others. His employment options and psychotherapy were discussed. Mr. Parrish remained temporarily totally disabled. Dr. Signer noted that psychotherapy visits were "being denied on the basis of noncompliance," but that Mr. Parrish had been complying with every one of Dr. Signer's appointments and that Mr. Parrish's Axis I diagnosis of major depression, single, mild to moderate without psychotic features, and posttraumatic stress disorder were diagnoses that required counseling, as well as medication.

19. Dr. Signer again saw Mr. Parrish on January 28, 2011. Mr. Parrish wanted to retire and leave his workplace. He accepted the reality that things would not get any better and that the harassment would continue and lead to panic, anxiety and worsening depression. Dr. Signer discussed both service and non-service-connected disability retirement with Mr. Parish and noted that Mr. Parrish "will consult his therapist for the first time on February 9, 2011, in El Cajon [a city in San Diego County]." Mr. Parrish remained temporarily totally disabled.

20. On May 20, 2011, Dr. Signer saw Mr. Parrish who had seen Dr. De Voss for a QME about four weeks earlier. Dr. De Voss recommended continuation of treatment with Darlene Hoyt, Ph.D.[2] Dr. Signer discussed permanent and stationary status, disability and future medical care as matters separate from his disability retirement. Dr. Signer discussed both service and non-service-connected disability. Mr. Parrish was considering future training. He was not willing to go back to the prison in order to sign documents as he worried about the effect that would have on him. Mr. Parrish would continue with his current medications.

21. Mr. Parrish was next seen by Dr. Signer on July 8, 2011. Mr. Parrish was still seeing Dr. Hoyt and was happy with his treatment. He reported a recent incident when a drunken person entered a home where Mr. Parrish was visiting and made disparaging comments about him, but Mr. Parrish was able to control himself. Dr. Signer discussed Mr. Parrish's retirement options with him. Mr. Parrish would continue with his current medications and remained temporarily totally disabled.

---

[2] Dr. Hoyt's records were not introduced.

22. Dr. Signer next saw Mr. Parrish on March 18, 2011. Mr. Parrish reported that he consulted with Dr. Hoyt every two weeks, and that this helped him to a great extent. Mr. Parrish felt there was a consensus among his treaters and others that he should retire from corrections work. He felt "somewhat more calm inside" having arrived at this decision. He described a recent incident where he was able to handle himself relatively well, shrugging things off. Dr. Signer opined that Mr. Parrish remained temporarily totally disabled.

23. Dr. Signer next saw Mr. Parrish on September 2, 2011, and authored a permanent and stationary report. Dr. Signer reviewed the interim and past medical history and performed a mental status examination. During the visit Mr. Parrish reported feeling "30% okay, accepting what would be and trying to move on." He was less reactive and showed less depression, anxiety, and specific symptoms. He continued in his psychotherapy/counseling with Dr. Hoyt, currently once per month. Dr. Signer's impression was Axis I: Posttraumatic stress disorder, mild, in partial remission, and depression, major, single, without psychotic features, in remission; Axis II: Avoidant features; Axis III: Nil; Axis IV: Assault in riot, shunning by colleagues; and Axis V: GAF 65.

Dr. Signer opined that Mr. Parrish's "condition was currently under relatively good control with limited and minimal symptoms triggered by occasional incidents." Dr. Signer opined that Mr. Parrish should continue with his current medication for the next 12 months, and after that time he should taper his use of medications under medical supervision. He felt Mr. Parrish would require psychiatric follow up every two to three months during that interval, but monthly at the time he was tapering his medications for an additional four to six weeks to ensure that he was able to function off the medications. Mr. Parrish should continue seeing Dr. Hoyt for six to 12 sessions to ensure appropriate adaptation as he develops plans for his future occupation and recommended vocational assistance. Dr. Signer opined that Mr. Parrish had achieved a fair degree of remission of his symptoms but they "would be expected to recur if he returned to his prior occupation as a correctional officer and was exposed to that environment, in particular the shunning behavior by his former coworkers. He indicates that some such incidents still occur and they lead to transient symptoms."

24. Dr. Signer saw Mr. Parrish on October 28, 2011. Dr. De Voss had performed a Qualified Medical Examination (QME) three weeks earlier and declared Mr. Parrish "permanent and stationary." Mr. Parrish was now on disability retirement and planned to return to school.

25. On February 17, 2012, Dr. Signer again saw Mr. Parrish. There had been no threats or calls and "everything had stopped."

26. In his September 20, 2013, note Dr. Signer referenced a May 11, 2012, visit but the notes from that visit were not introduced at hearing. Mr. Parrish advised that his case had been settled, but there was a request that he be reevaluated to affirm that he was not fit to return to work. Mr. Parrish reported that even those telephone calls triggered anxiety and sent him back to the past. Mr. Parrish was working for an auto dealership in Blythe and liked

his job. He reported that he suffered symptoms when he first arrived at his new job because some of the employees or customers were correctional officers who would not deal with him. However, over time he has been able to cope with this and has not experienced any panic attacks. His appetite and sleep had improved. He reported feeling "off" every three to four weeks based on some reminder of his former job and during that time he became more withdrawn, reclusive and ruminative about his situation; he became anxious during that time, but denied panic attacks and his sleep and appetite became more interrupted but he recovered relatively soon. He was not presently consulting with a therapist or receiving treatment of any kind. He was not taking any medications. Dr. Signer noted that Mr. Parrish was "essentially in remission from symptoms. He will have brief episodes of anxiety when faced with reminders of his former work." Dr. Signer wrote, "While he is in remission from his symptoms and not in current treatment or using medication, he cannot return to his former duties as a correctional officer as he will quite rapidly deteriorate and become nonfunctional in both his personal and his occupational life."

27. On February 7, 2014, Dr. Signer completed a treating physician's progress report. His diagnoses were posttraumatic stress disorder; depression, single/moderate. His treatment plan was to have Mr. Parrish returned to care in one month. Dr. Signer prescribed sertraline 100 mg one tablet at night #30 with one refill, buspirone 10 mg two times a day #60 with one refill, and trazodone100 mg one-half to one tablet at night #30 with one refill. In the employee work status portion of the report, Dr. Signer checked the box marked: "Permanent and Stationary status remains unchanged."

28. On March 27, 2014, Dr. Signer completed another treating physician's progress report. In it he noted that Mr. Parrish complained of increased stress from reevaluation and he continued to ruminate with questionable ideas of reference. The objective findings were that Mr. Parrish was perseverative. Dr. Signer diagnosed manic disorder, single episode. His treatment plan was to have Mr. Parrish return to care in six to eight weeks and he gave him samples of latuda 20 mg. Dr. Signer again checked the box marked: "Permanent and Stationary status remains unchanged."

29. On May 23, 2014, Dr. Signer conducted another evaluation. He noted that Mr. Parrish complained of anxiety with marked activation. Mr. Parrish had a consistent affect. Dr. Signer's diagnoses were posttraumatic stress disorder; depression, major/single without psychosis. He wanted Mr. Parrish to return to care and to continue his current medications. Dr. Signer opined that Mr. Parrish "cannot work in any prison or similar facility in any department or subsection."

30. In a second treating physician's progress report also dated May 23, 2014, Dr. Signer checked the box indicating that the "permanent and stationary status remains unchanged."

31. On July 18, 2014, Dr. Signer completed another evaluation and authored a treating physician's progress report. Mr. Parrish complained of anxiety and had episodes of panic. The objective findings were that he had a constructed affect. There was no activation.

Dr. Signer's diagnosis was manic disorder, single episode. Mr. Parrish was to return to care and continue with his current medications. He remained permanent and stationary

32. On December 19, 2014, Dr. Signer again evaluated Mr. Parrish. He noted he was more ruminative when unoccupied. He experienced full-blown panic episodes at night. He paced to look out the windows. Dr. Signer observed sweaty palms and an anxious affect. He diagnosed Mr. Parrish with manic disorder, single episode. His treatment plan was for Mr. Parrish to return to care in three months, and he prescribed sertraline 100 mg daily #30 with three refills for major depressive disorder, buspirone 10 mg b.i.d. #60 with three refills for anxiety, and trazodone 100 mg ½ to 1 tablet h.s. #30 with three refills for depression. Dr. Signer noted that Mr. Parrish's permanent and stationary status remained unchanged.

Job Description Documents

33. Documents identifying the job description for a correctional officer, as well as the essential functions of a correctional officer, were introduced and relied upon by the experts.

CalPERS's Medical Evaluation Conducted by Dr. Warick

34. CalPERS obtained Mr. Parrish's medical records and sent those to Lawrence Warick, M.D., Ph.D., to review. Dr. Warick authored a report on November 25, 2013, discussing the psychiatric disability evaluation he performed for CalPERS. In his report, Dr. Warick noted that Mr. Parrish "is being evaluated for a claimed CalPERS disability retirement." Nothing in Dr. Warick's report indicated that he was aware that he was conducting a re-evaluation of an existing disability retirement, although at this hearing he testified that was his understanding. Further, although Dr. Warick noted that Mr. Parrish filed a workers' compensation claim, nowhere in his report did Dr. Warick note that Mr. Parrish received an industrial disability retirement in 2011. As noted below, these became key distinctions in this proceeding.

Dr. Warick obtained a history of the injury from Mr. Parrish, conducted a records review, and inquired about the treatment Mr. Parrish received and its results. Dr. Warick noted that Mr. Parrish's "family physician . . . took him off work in April 2009 and he has not been back to work as a correctional officer since then." Dr. Warick did not reference the industrial disability retirement. Dr. Warick wrote that Mr. Parrish saw a psychologist for two months without much help, and saw a psychiatrist who put him on medication but it did not help him. Dr. Warick wrote that Mr. Parrish claimed therapy did not help him; only time has helped.

In the personal history section Dr. Warick noted the death of Mr. Parrish's beloved grandmother a few years ago that "he grieves," as well as issues regarding child support with Mr. Parrish's wife's first husband and custody issues involving the two children Mr. Parrish has with a woman with whom he had a prior relationship. Under present symptomatology, Dr. Warick wrote that there were no physical or psychiatric manifestations. In the mental

status examination portion, Dr. Warick noted that Mr. Parrish did not appear depressed or anxious. He was coherent and did not display any retarded or pressured speech. He did not show any overt signs of clinical depression. Dr. Warick did not observe any overt evidence of clinical anxiety or tension. Mr. Parrish had no process or content of thought difficulties and his thinking and judgment were grossly intact. He denied having any nightmares or sleep problems.

Dr. Warick administered the MCCM-III, a psychological assessment tool intended to provide information on personality traits and psychopathology, including specific psychiatric disorders.[3] Dr. Warick opined that the test results were consistent with his "observation of a mixed personality configuration, and Axis I is endorsed in the area of a generalized anxiety disorder. The MCMI confirms my impression that [Mr. Parrish] is not suffering from a mood disorder, either dysthymia or major depressive order. Nor does he suffer from a posttraumatic stress disorder. Other than endorsing anxiety, he endorses traits of a compulsive personality."

Dr. Warick's diagnostic impression[4] was Axis I: Adjustment disorder with mixed features, resolved; Axis II: Diagnosis deferred; Axis III: Obesity, history of hernia operation; Axis IV: Occupational problems; and Axis V: GAF 80. Dr. Warick opined that the symptoms Mr. Parrish described were more consistent with an adjustment disorder with mixed features, opining that an "acute adjustment disorder involves a disturbance lasting six months or longer, with development of emotional and behavioral symptoms in response to an identifiable stressor occurring within three months of the onset of the stressor." Although the medical records contained diagnoses of posttraumatic stress disorder and major depressive disorder, from the history that Dr. Warick obtained and the records he reviewed, Dr. Warick did not think it was "quite clear" if Mr. Parrish had major depression and "certainly he had no symptoms that are consistent with [posttraumatic stress disorder]."

Dr. Warick opined in his report that Mr. Parrish's symptoms were more consistent with transitory adjustment disorder with mixed features which has resolved with time and without medication. Dr. Warick noted that Mr. Parrish had other stressors in his life, namely raising six children, losing his beloved grandmother, and losing an aunt who died about one month ago. Dr. Warick concluded that Mr. Parrish has no physical or emotional symptoms currently. He felt there were no job duties he was unable to perform and that he was not substantially incapacitated for performing his duties, noting that the only reason he had not returned to work was because of "the atmosphere he experienced from fellow officers, rather than any particular incapacity on a physical or emotional basis." Nothing in his conclusion

---

[3] A copy of the report documenting the results of the MCMI-III was introduced at hearing and Dr. Warick testified about how it supported his opinions.

[4] Dr. Warick used the former edition of the manual, the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, (DSM-IV), and not the current edition, the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, (DSM-5). The current edition no longer uses Axes.

indicated that Dr. Warick was aware that claimant had not returned to work because he was granted an industrial disability retirement.

Dr. Warick's Testimony

35. Dr. Warick obtained his medical degree in 1960 from Albert Einstein College of Medicine. He did a rotating internship at Los Angeles County General Hospital and residencies in neurology and psychiatry at USC School of Medicine. He is board-certified in psychiatry. Dr. Warick has a private practice with 40 percent of his time spent treating patients, 20 percent teaching at UCLA, and 40 percent spent doing forensic work.

Dr. Warick testified consistent with his report. He admitted that nothing in his report documented that he was evaluating Mr. Parrish to determine if he was still disabled, testifying that he "understood that" to be the case, but then stated that the purpose of his evaluation was "to decide if Mr. Parrish was disabled." Based upon his review of the records and his evaluation of Mr. Parrish, Dr. Warick believed the diagnosis of post traumatic stress disorder was incorrect. Dr. Warick acknowledged that he was disagreeing with all of Mr. Parrish's treaters who had diagnosed him with that condition. Dr. Warick opined that the records demonstrated that Mr. Parrish had mild symptoms that resolved over time. Dr. Warick also believed that other stressors, including family deaths, financial concerns and custody issues contributed to Mr. Parrish's condition.

Dr. Warick opined that Mr. Parrish had an adjustment disorder, explaining that time and not medication healing Mr. Parrish, was a factor in reaching that conclusion. Moreover, Mr. Parrish presented with no symptoms at the evaluation consistent with a diagnosis of post traumatic stress disorder. Dr. Warick explained that he has treated hundreds of patients with post traumatic stress disorder and it is a self-limiting condition with treatment. Dr. Warick testified that although the records documented various symptoms consistent with post traumatic stress disorder, Mr. Parrish did not report these when he met with Dr. Warick and the "classic symptoms of post traumatic stress disorder were not present" when Dr. Warick took a history from Mr. Parrish. Instead, he testified that Mr. Parrish's symptoms were consistent with generalized anxiety.

Dr. Warick testified that Mr. Parrish did not say he could not return to work because of his diagnosis, rather he did not want to return to work because he was afraid of the reactions of his colleagues. Dr. Warick testified that Mr. Parrish felt "picked on" by colleagues; he was not disabled. Dr. Warick believed Mr. Parrish could return to work at another facility if he feared being taunted by his colleagues.

Dr. Signer's Testimony

36. Dr. Signer obtained his medical degree from McGill University, completing an internship in straight medicine at Sir Mortimer B. Davis-Jewish General Hospital in Montréal, a residency in psychiatry at the University of Toronto, and a fellowship in neurobehavior at UCLA. Dr. Signer currently has a private practice consisting of 90 percent

clinical treatment of patients and 10 percent forensic work. He performs evaluations for workers compensation cases, having evaluated "hundreds" of public safety officers," and has been retained by CalPERS to perform evaluations in the past.

Dr. Signer testified consistent with his records, explaining that Mr. Parrish met the criteria to be diagnosed with post traumatic stress disorder. He explained how the DSM does not require there to be "nightmares" in order to render the diagnosis, and that it can last a lifetime, with patients doing well and then having a triggering event that causes the post traumatic stress disorder to "light up." Dr. Signer opined that Mr. Parrish's MMPI –III results were consistent with a diagnosis of post traumatic stress disorder. Moreover, Mr. Parrish was treated substantially for several months and his symptoms would wax and wane, consistent with a diagnosis of post traumatic stress disorder. Dr. Signer disagreed with Dr. Warick's adjustment disorder diagnosis, explaining that an adjustment disorder contains very few criteria and has a much lower level of stressors than post traumatic stress disorder. An adjustment disorder lasts six months on average, has minimal symptoms, and it is not caused by a traumatic episode. One with an adjustment disorder does not have problems with dissociative episodes or ideas of reference, which are symptoms Mr. Parrish experienced. Furthermore, adjustment disorder is usually treated one time with therapy but not with medications. Moreover, in the "hierarchy of diagnoses," an adjustment disorder is subsumed within post traumatic stress disorder, such that one cannot have both. As Mr. Parrish was diagnosed by all of his treaters with post traumatic stress disorder and his symptoms were consistent with that diagnosis, he cannot have an adjustment disorder.

During his testimony, Dr. Signer pointed out the various medical records supporting his opinions, including the psychotropic medications and cognitive therapy prescribed; noting how the records documented Mr. Parrish's worsening condition. Dr. Signer testified that Mr. Parrish's presentation was consistent with the diagnosis of post traumatic stress disorder. Dr. Signer noted that although all of Mr. Parrish's treaters determined he had post traumatic stress disorder, Dr. Warick disagreed with that diagnosis and made a diagnosis solely limited to Mr. Parrish's present state, when his condition was "substantially in remission." Dr. Signer explained that the records documenting that Mr. Parrish was doing well were during times when his post traumatic stress disorder was in remission.

However, when Mr. Parrish would discuss the events of the riot and resulting harassment, it would "trigger" his post traumatic stress disorder, causing him to become anxious, sweaty, jittery and "activated." Whenever Mr. Parrish contemplated returning to work he expressed concerns about his "life and limb," fearing he would be hurt or killed. Dr. Signer disagreed with Dr. Warick's determination that Mr. Parrish can return to work. Dr. Signer opined that Mr. Parrish cannot perform any of the duties listed on the job descriptions and is unable to return to work. Mr. Parrish has shown "reactivation" of his symptoms in various circumstances and his return to work as a corrections officer would trigger his post traumatic stress disorder causing the "full panoply of the symptoms" he had before and he would be medically taken off work again. As Dr. Signer explained, post traumatic stress disorder can last a lifetime; the memories last forever, but Mr. Parrish can be treated to help him deal with events that trigger his symptoms. However, because he has received treatment

since 2009, and his symptoms increased at times during his treatment, it was not likely his condition would ever completely resolve. Dr. Signer believed that Mr. Parrish's decision to move from Blythe, the city where he was born and raised, was a good one as it removed him from his stressful environment.

Mr. Parrish's Testimony

37. Mr. Parrish testified about the riot, the false rumors, and the harassment he received in the months and years following the riot. As he explained, being thought of as a coward in the correctional system is worse that an officer who brings drugs into the prison. He described his condition, the stress he felt, and his fear of returning to work now that he has been identified as a "stand alone." Mr. Parrish also described the great love he had for his former career, the difficult decision to end that employment, and the relief he has experienced moving from Blythe, his hometown.

Mr. Parrish disagreed with Dr. Warick's opinions regarding other stressors in his life explaining that his "beloved grandmother" was elderly and sick for a long time so he knew she was going to die; moreover she died in 2008, before the riot and he had no symptoms from her death; his sister[5] is still alive, so he has no idea what "sister death" Dr. Warick is referencing; there are no custody issues between his wife and her ex-husband; and he does not have any financial issues. He testified that the only thing that caused his stress was his employment and this was supported by the medical records. Mr. Parrish also disagreed with Dr. Warick's opinion that medication did not help as he found that it did and told Dr. Warick that during his evaluation.

Mr. Parrish described the physical and psychological conditions he suffered due to the fallout from the riot and how those symptoms all recurred at the thought of having to return to work. He described his sleeplessness, anxiety, loss of hair, loss of appetite, short-temperedness, sweating, pacing, and inability to be around others. He explained how treatment has helped, but also how he still suffers regression at the thought of returning to work. He explained that working at another prison is not a viable option as the prison population, both guards and inmates, knew he was marked as a "stand alone," making him a target wherever he went. Mr. Parrish's testimony was credible and sincere.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Evidence Code section 500 provides that, except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that the party is asserting.

---

[5] Dr. Warick referenced an aunt's death. No testimony about this was elicited.

2. Evidence Code section 115 defines "burden of proof" as a party's obligation "to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court." Unless specified, the burden of proof requires proof by a preponderance of the evidence.

3. In this proceeding, CalPERS had the burden of proving by a preponderance of the evidence that Mr. Parrish was no longer substantially incapacitated from performing the duties of a correctional officer and should be reinstated to his former employment.

Applicable Statutes

4. Government Code section 20026 defines the terms "disability" and "incapacity for performance of duty," when used as a basis for retirement, to mean a "disability of permanent or extended and uncertain duration" that is based on "competent medical opinion."

5. Government Code section 21151, subdivision (a), provides that a state safety or state peace officer who is "incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability . . . regardless of age or amount of service."

6. Government Code section 21156 provides that if the evidence demonstrates that the member 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. The determination of incapacitation shall be based on competent medical opinion.

7. Government Code section 21192 provides that recipients of a disability retirement allowance under the minimum age for voluntary retirement for service may be required to undergo a medical examination. Based on the results of that examination, CalPERS shall determine whether or not the member is still incapacitated from performing his or her job duties.

8. Government Code section 21193 provides if the member is determined to no longer be eligible for a disability retirement, it shall be canceled and the member shall be reinstated.

Appellate Authority

9. "Incapacitated for the performance of duty" means the substantial inability of the applicant to perform his or her usual duties. An employee who is incapacitated only to a limited extent is not entitled to disability retirement. When an applicant can perform his or her customary duties, even though doing so may be difficult or painful, the public employee is not "incapacitated" and does not qualify for a disability retirement. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 875-877, 886-887; *Sager v. County of Yuba* (2007) 156 Cal.App.4th 1049, 1057.)

10. Fear of further injury or further aggravation is insufficient. (*Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854.) In *Hosford* the court rejected a contention that the employee's medical condition created an increased risk that he would suffer further injury or aggravation in the future. In rejecting the contention that this increased risk rendered the employee presently disabled, the court stated that "this assertion does little more than demonstrate [the employee's] claimed disability is only prospective (and speculative), not presently in existence." (*Id.*, at p. 863.)

Thus, the disability must be presently existing and not prospective in nature. The employee must be presently incapable of performing the duties of a position. Prophylactic restrictions that are imposed only because of a risk of future injury are insufficient.

11. Mr. Parrish's receipt of any type of disability in a related workers' compensation proceeding is not binding in this proceeding. (*Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 697.) Determinations made in other proceedings regarding an injured employee do not apply to industrial disability retirement proceedings. (*English v. Board of Administration of the Los Angeles City Employees' Retirement System* (1983) 148 Cal. App. 3d 839, 844-845.) A worker's compensation ruling is not binding on the issue of eligibility for disability retirement because the focus of the issues and the parties are different. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207.)

Evaluation

12. The competent medical evidence and other available information established by a preponderance of the evidence that Mr. Parrish remains substantially incapacitated from performing the customary and usual duties required of a correctional officer. The evidence demonstrated that Mr. Parrish suffered a substantially incapacitating psychological injury from which he has not recovered. The cause of the injury was work-related; there were no pre-existing symptoms. The evidence conclusively demonstrated that Mr. Parrish remains permanently disabled and incapacitated from performing the usual and customary duties of a correctional officer.

Dr. Signer's opinion is given great weight. He has been Mr. Parrish's treating physician since 2010. He observed him over an extended period of time and noted how his job caused him stress resulting in his inability to perform his usual and customary duties. His diagnosis of post traumatic stress disorder was supported by his records, as well as the opinions of other providers. Moreover, Dr. Signer referenced several times in his records how returning to work would cause additional harm to Mr. Parrish's condition and re-aggravate his post traumatic stress disorder. Unlike a typical physical condition, a psychological condition is much more tenuous and difficult to resolve. Also, unlike *Hosford*, this is not a case where there is a potential for injury; the competent medical records demonstrated that, with proper treatment, Mr. Parrish's condition is in remission but that returning him to work will cause his condition to "light up" as Dr. Signer described. Unlike a physical injury that heals, Mr. Parrish will always suffer from post traumatic stress

disorder, it will never completely resolve, but with treatment he can manage his symptoms. The competent medical evidence demonstrated that he remains unable to return to work.

Dr. Warick's opinion that Mr. Parrish could perform the duties of a corrections officer is given minimal weight for several reasons. First, Dr. Warick had a limited opportunity to examine Mr. Parrish. Second, his testimony and report demonstrated that he did not understand his role in this matter, despite his testimony to the contrary. As CalPERS had already placed Mr. Parrish on disability, the diagnoses made that resulted in the disability are assumed to be true. The issue in this case was whether Mr. Parrish remained disabled, not whether his original diagnosis was correct. Dr. Warick opined that a basis for his opinion was that Mr. Parrish did not present on the day of his evaluation with symptoms and that he did not report a history consistent with post traumatic stress disorder. However, that opinion was belied by the records and did not take into account that Mr. Parrish's condition is in remission as he has removed himself from his stressful environment. Moreover, Dr. Warick's opinions regarding other contributing stressors was unsupported by the evidence. Finally, Dr. Warick's testimony that Mr. Parrish did not say he could not return to work because of his diagnosis, but instead claimed he did not want to return to work because he was afraid of his colleagues' reactions and he did not claim he had "nightmares," only bad dreams, seemed to be more like "splitting hairs" and was contrary to the competent medical records that demonstrated that Mr. Parrish is unable to perform the usual and customary duties of a correctional officer.

ORDER

Theodore Parrish's appeal from CalPERS's determination that he is no longer eligible for a disability retirement is granted. Theodore Parrish remains substantially incapacitated from performing the usual and customary duties of a correctional officer and shall remain on disability retirement. CalPERS's determination to the contrary is reversed.

DATED: September 15, 2016

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings