

**ATTACHMENT A**  
**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:

STACI N. CAMPBELL,

Respondent,

and

CALIFORNIA HIGHWAY PATROL,

Respondent.

Case No. 2016-0567

OAH No. 2016070209

**PROPOSED DECISION**

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on February 13, 2017, in Sacramento, California.

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

Respondent Staci N. Campbell represented herself.

No one appeared for or on behalf of respondent California Highway Patrol (CHP), its default was entered, and this matter proceeded as a default proceeding pursuant to Government Code section 11520 as to the CHP only.

Evidence was received, the record was closed, and the matter was submitted for decision on February 13, 2017.

**SUMMARY**

Ms. Campbell was approved to receive industrial disability retirement benefits on the basis of an orthopedic (right hand/wrist) condition, effective December 8, 2000. A subsequent medical evaluation, however, revealed evidence that she is no longer

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
FILED 3/2 2017  
Deborah Wooten

substantially incapacitated for the performance of her usual duties as a CHP Officer. CalPERS's informed Ms. Campbell of the medical evidence, and told her that her industrial disability benefits will be cancelled and she will be reinstated as a CHP Officer. Ms. Campbell appealed CalPERS's determination. The persuasive medical evidence presented on appeal established she is no longer substantially incapacitated due to an orthopedic (right hand/wrist) condition. Therefore, Ms. Campbell's appeal should be denied.

## FACTUAL FINDINGS

### *Prior Employment and Disability Retirement Election Application*

1. Ms. Campbell began working as a CHP Officer in 1988. She is a patrol member of CalPERS by virtue of her employment. She was 50 years old as of the date of hearing.

2. On May 17, 2001, Ms. Campbell signed a Disability Retirement Election Application seeking an industrial disability retirement, which CalPERS received the following week. The specific disabilities she identified on her application were hypertension/job stress and pain in her hands, wrists, and arms, bilaterally. She stated her disabilities prevented her from performing any repetitive forceful gripping, twisting, pushing, or pulling with her right hand and from writing or keying for more than 30 minutes.

3. On March 4, 2002, CalPERS sent Ms. Campbell correspondence approving her application on the basis of an orthopedic (right wrist/hand) condition. She began receiving industrial disability retirement benefits retroactively to December 8, 2000.

### *Reevaluation of Disabled Status*

4. On February 19, 2016, CalPERS sent Ms. Campbell correspondence explaining it had completed a reevaluation of her qualifications for industrial disability retirement. Based upon the medical evidence reviewed, CalPERS concluded she was no longer substantially incapacitated for the performance of her usual duties as a CHP Officer. Therefore, CalPERS informed her she was being reinstated to her former position, and she needed to make arrangements with the CHP to return to her former position.

5. Ms. Campbell timely appealed CalPERS's decision to reinstate her to her former position. On June 20, 2016, Anthony Suine, Chief of CalPERS's Benefit Services Division, signed the Accusation solely in his official capacity. The sole issue raised by the Accusation is whether Ms. Campbell continues to be substantially incapacitated for the performance of her usual job duties as a CHP Officer due to an orthopedic (right hand/wrist) condition.

*Reinstatement as a CHP Officer*

6. Someone from the CHP contacted Ms. Campbell in response to CalPERS's February 19, 2016 correspondence to make arrangements for her to be reinstated to her former position as a CHP Officer, and she was subsequently reinstated to that position in April 2016. While she has been reinstated as a CHP Officer, she is not authorized to perform the duties of a peace officer because she has not been allowed to enroll in the five-week training course necessary to obtain P.O.S.T.<sup>1</sup> recertification. Obtaining recertification is a prerequisite to having her peace officer duties restored, but she was told she is not allowed to enroll in the training course because she appealed CalPERS's decision to reinstate her. She is currently working as the court liaison in East Sacramento, performing office work and presenting investigation reports to the district attorney's office for determination of whether criminal charges will be filed.

*Usual Duties of a CHP Officer*

7. A document entitled "California Highway Patrol Officer 14 Critical Physical Activities" identifies the following relevant usual duties of a CHP Officer, which are performed with the following frequencies for the following durations:

Activity	Job Tasks	Frequency	Duration
Lift/Carry	a. Lift and carry objects weighing 10 to 25 pounds (e.g., gear bag)	1 to 3 times per day	2 to 5 minutes
	b. Without assistance, lift and carry objects weighing 30 to 50 pounds (e.g. car tire, road debris)	1 to 3 times per month	1 minute
	c. With assistance, lift and carry an individual resisting arrest (20-35 feet)	1 to 2 times per year	1 minute
Push/Pull	a. Pull/drag a non-resistive/incapacitated person (160-200 pounds) 5-20 feet at an emergency situation or protest	1 to 2 times per year	1 minute
	b. Pull/drag an individual (160-200 pounds) resisting arrest 5-20 feet	1 to 2 times per year	1 minute
	c. Separate uncooperative persons (160-200 pounds) by pushing, pulling, using locks, grips, or holds and physically restrain or subdue a resistive individual using reasonable force	1 to 3 times per month	5 to 60 seconds
	d. Handcuff a suspect	1 to 3 times per month	1 minute

<sup>1</sup> Peace Officer Standards and Training.

	e. Pull/drag heavy objects (e.g., logs) off the roadway (5-35 feet)	4 to 6 times per year	1 minute
Climb	a. Climb over a guard rail or median barrier (2-3 feet)	1 to 3 times per month	10 to 45 seconds
	b. Climb over chain-link or wooden fences (5-7 feet) and over walls (4-7 feet)	4 to 6 times per year	10 to 45 seconds
	c. Climb steep embankments, hills, or gullies	4 to 6 times per year	1 minute
Manual Dexterity/ Firearms	a. Fire 50-100 rounds with a handgun at a target during practice, firearms qualification, or at a combat style shooting course	4 to 6 times per year	8 to 20 minutes
	b. Fire a shotgun and rifle during practice, firearms qualifications, or on the job	4 to 6 times per year	8 to 20 minutes
	c. Draw and hold a handgun, shotgun, or rifle on a felony suspect until backup arrives or to cover an area of responsibility for extended time periods	4 to 6 times per year	2 to 5 minutes
	d. Operate a computer keyboard in an office or in a patrol car (MDC) to enter/retrieve information and to complete reports or other documentation	1 to 3 times per day	8 to 20 minutes
	e. Operate a radio, cellular phone, sirens, and lights and/or hand spotlight while driving patrol vehicle	1 to 2 times per hour	1 minute
Drive	a. Drive on patrol under a variety of conditions and transport prisoners/suspects	1 to 3 times per day	30 to 45 minutes
	b. Drive a patrol vehicle on open road at high speeds in response to a call or emergency or in pursuit of fleeing vehicles under varied conditions	1 to 3 times per week	8 to 20 minutes
	c. Drive a vehicle in a manner to slow down traffic (e.g., weaving back and forth)	1 to 3 times per month	2 to 5 minutes

Additionally, Government Code section 1031, subdivision (f), requires all peace officers in the State of California to “be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer.”

### *Medical Evidence*

#### CalPERS’s evidence

8. CalPERS referred Ms. Campbell to Daniel M. D’Amico, M.D., for an Independent Medical Examination (IME) to determine whether she was still substantially incapacitated for the performance of her usual duties as a CHP Officer. Dr. D’Amico, a board-certified orthopedic surgeon, performed his IME on January 25, 2016. He wrote a report documenting his IME, which was entered into evidence. He also testified at hearing.

9. At the time of the IME, Ms. Campbell was 49 years old. She complained of some discomfort, pain, tingling, and the feeling of weakness when gripping with her right hand. She also had pain when she overused her right hand. She was not taking any medications for the pain, and she had not received any medical treatment for the pain since retiring.

10. Ms. Campbell had a full range of motion of her cervical spine, right and left shoulders, right and left elbows, and right and left wrists upon physical examination. She had good thumb motion upon flexion and extension, bilaterally, and she flexed all her fingers without difficulty. She had no signs of impingement in either shoulder. She had a negative Finkelstein’s test and Phelan’s test, bilaterally, but a positive Tinel’s sign at the base of the right thumb and volar aspect of the wrist.

11. Based on his IME of Ms. Campbell, Dr. D’Amico concluded she was physically capable of performing all the usual duties of a CHP Officer. While the positive Tinel’s sign in her right thumb and wrist was indicative of problems with her median nerve, he opined those problems were not to such a degree as to render her physically incapable of performing any of the usual duties. Therefore, he concluded she was not substantially incapacitated for the performance of her usual duties as a CHP Officer.

12. Dr. D’Amico testified at hearing in a manner consistent with his IME report. Additionally, he stated he did not question her complaints of pain in her right hand and wrist during the IME, but explained he found no objective evidence of an orthopedic condition that would explain her subjective complaints. Furthermore, he recognized the different standards applicable to obtaining worker’s compensation benefits, on the one hand, and disability retirement benefits, on the other, and explained subjective complaints of pain are insufficient to qualify for the latter. Lastly, Dr. D’Amico opined there were no activities Ms. Campbell was physically unable to perform when shown a copy of the “California Highway Patrol Officer 14 Critical Physical Activities.”

### Ms. Campbell's evidence

13. Ms. Campbell did not call any medical experts to testify on her behalf at hearing. Nor did she introduce any medical reports or other documentary evidence. Her evidence consisted solely of her testimony. She explained she underwent a more thorough medical evaluation when CalPERS was first determining whether she was substantially incapacitated than during the subsequent evaluation process to determine if she remained substantially incapacitated. Additionally, her recollection was that Dr. D'Amico examined her left arm, wrist, and hand more closely than her right arm, wrist, and hand, which she felt resulted in incomplete data since her problems were in the latter body parts.

### *Discussion*

14. Dr. D'Amico's opinion that Ms. Campbell is no longer substantially incapacitated for the performance of her usual duties as a CHP Officer due to an orthopedic (right hand/wrist) condition was uncontroverted and persuasive. His IME report documents a thorough physical examination, and persuasively explained the factual bases for his opinions and conclusions. He testified consistently with his report. Additionally, he persuasively explained why the symptoms with her right median nerve are insufficient to render her substantially incapacitated, and acknowledged the different standards applicable to obtaining worker's compensation benefits and disability retirement benefits.

While Ms. Campbell did not believe Dr. D'Amico's IME was as thorough as the physician's upon which CalPERS based its original determination that she was substantially incapacitated, she offered no medical evidence to rebut Dr. D'Amico's opinions and conclusions.

### *Summary*

15. The persuasive medical evidence established that Ms. Campbell is no longer substantially incapacitated for the performance of her usual job duties as a CHP Officer due to an orthopedic (right hand/wrist) condition. Therefore, her appeal of CalPERS's determination that she is no longer substantially incapacitated for the performance of her usual job duties as a CHP Officer should be denied.

## LEGAL CONCLUSIONS

### *Applicable Law*

1. Once Ms. Campbell retired for industrial disability, CalPERS's Board of Administration had authority to require her to undergo medical evaluation at any time prior to her reaching the minimum age for voluntary retirement for service. (Gov. Code, § 21192.) "If the determination pursuant to Section 21192 is that [she] is not so incapacitated for duty in the position held when retired for disability . . . and . . . her employer offers to reinstate

[her], . . . her disability retirement allowance shall be canceled immediately . . . .” (Gov. Code, § 21193.) The minimum age for voluntary retirement for service applicable to Ms. Campbell is 50, and she did not reach that age until after Dr. D’Amico performed his IME. (Gov. Code, § 21060, subd. (a).)

2. The analysis of whether a recipient of an industrial disability retirement is “still incapacitated” for the performance of her usual job duties under Government Code section 21192 “is limited to determining whether the conditions for which disability retirement was granted continue to exist.” (*California Department of Justice v. Board of Administration of California Public Employees’ Retirement System* (2015) 242 Cal.App.4th 133, 141 [the analysis of “still incapacitated” is limited to consideration of the disability for which disability retirement was originally granted, and any substantial incapacity due to a different disability is irrelevant].) And the outcome of that analysis must be based on competent medical evidence. (Gov. Code, § 21192.)

3. The courts have interpreted the phrase “incapacitated for the performance of duty” to mean “the substantial inability of the applicant to perform [her] usual duties.” (*Mansperger v. Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 877.) It is not necessary that the person be able to perform any and all duties since public policy supports employment and utilization of the disabled. (*Schrier v. San Mateo County Employees’ Retirement Association* (1983) 142 Cal.App.3d 957, 961.) Instead, the frequency with which the duties she cannot perform are usually performed as well as the general composition of duties she can perform must be considered. (*Mansperger v. Public Employees’ Retirement System, supra*, 6 Cal.App.3d at pp. 876-877 [while applicant was unable to lift or carry heavy objects due to his disability, “the necessity that a fish and game warden carry a heavy object alone is a remote occurrence”].)

4. Discomfort, which may make it difficult for one to perform her duties, is insufficient to establish permanent incapacity. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207 [mere discomfort which makes it difficult to perform one’s job does not constitute a permanent incapacity]; citing, *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 862.) Furthermore, an increased risk of further injury is insufficient to constitute a present disability, and prophylactic restrictions on work duties cannot form the basis of a disability retirement. (*Hosford v. Board of Administration, supra*, 77 Cal.App.3d at p. 863.)

5. At hearing, Ms. Campbell argued the Board of Administration is prohibited from reinstating her to her former position because she has reached the minimum age for voluntary service retirement under Government Code section 21060, subdivision (a). But Government Code section 21193 compels the cancellation of her disability benefits and her reinstatement as a CHP Officer upon a determination she is no longer substantially incapacitated, without regard to her age. And while such determination must be based on competent medical evidence, Government Code section 21192 authorizes the Board of Administration to compel “any recipient of a disability retirement allowance under the minimum age for voluntary retirement for service . . . to undergo a medical evaluation . . . .”

Ms. Campbell had not reached age 50 *as of the date of Dr. D'Amico's IME*. Therefore, her argument was not persuasive.

*Conclusion*

6. The persuasive medical evidence established Ms. Campbell is no longer substantially incapacitated for the performance of her usual job duties as a CHP Officer due to an orthopedic (right hand/wrist) condition. Therefore, her appeal of CalPERS's determination that she is no longer substantially incapacitated for the performance of her usual job duties as a CHP Officer should be denied.

**ORDER**

Respondent Staci N. Campbell's appeal from CalPERS's determination that she is no longer substantially incapacitated for the performance of her usual job duties as a California Highway Patrol Officer with respondent California Highway Patrol due to an orthopedic (right hand/wrist) condition is **DENIED**.

DATED: February 28, 2017

DocuSigned by:  
*Coren D. Wong*  
F42876F5E756451...

---

**COREN D. WONG**  
Administrative Law Judge  
Office of Administrative Hearings