ATTACHMENT A

THE PROPOSED DECISION
PROPOSED DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on July 17, 2018.

Charles H. Glauberman, Senior Attorney, represented the petitioner, Anthony Suine, Chief, Benefit Services Division, California Public Employees’ Retirement System, State of California (CalPERS).

Jill Suzanne Breslau, Attorney at Law, represented Lisa K. Magee, respondent, who was present throughout the hearing.

No appearance was made by or on behalf of respondent California Highway Patrol (CHP).

The matter was submitted on July 17, 2018.
FACTUAL FINDINGS

Application for Disability Retirement

1. Respondent was employed by CHP as a Commercial Vehicle Inspection Specialist for two years. Prior to that, respondent worked approximately 13 years in state service. By virtue of her employment, respondent is a state miscellaneous member of CalPERS subject to Government Code section 21151.

2. Respondent retired for service effective June 1, 2017, while awaiting a decision on her claim for a disability retirement.

3. On March 2, 2017, respondent signed a Disability Retirement Election Application and submitted it to CalPERS. Respondent sought a disability retirement with a retirement date of June 1, 2017; she said her last day on the CHP's payroll was May 31, 2017. In her application, under the category “Application Type,” respondent checked the box indicating that she was seeking “Service Pending Disability Retirement.” Respondent claimed a disability on the basis of “cervical radiculopathy, neck muscle strain, subseq. post-concussion syndrome.” She asserted that, on September 3, 2015, while conducting an inspection, she walked into the extended mirror of a box truck, hitting the mirror hard with her head. She wrote that her neck “felt like an accordion,” and she fell to her knees onto the cement. Respondent described the job limitations that resulted from the incident as being “unable to crawl [under] commercial vehicle to inspect,” even if using a creeper. Respondent indicated she had filed a workers’ compensation claim relating to the injuries she sustained in the September 2015 incident.

4. By letter dated June 7, 2017, CalPERS informed respondent that, after review of her medical records, it had determined that her “orthopedic (neck, head) condition is not disabling” and therefore, she was not “substantially incapacitated from the performance of [her] job duties as a Commercial Vehicle Inspection Specialist I . . . .” CalPERS denied her application for disability retirement and provided respondent with several options to consider, including to “[c]ontinue/resume working as a Commercial Vehicle Inspection Specialist I” with the CHP. The denial of the disability retirement did not impact respondent’s service retirement, and she continued to receive service retirement benefits.

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1 Hereinafter, unless specified otherwise, “respondent” refers to Ms. Magee.

2 The other options under “Application Type,” included “Industrial Disability Retirement” and “Service Pending Industrial Disability Retirement.”

3 A creeper is a flat-bed device, often with a headrest, supported by six or more wheels. It is typically used by automotive mechanics or others to slide underneath a vehicle to conduct an inspection or conduct a repair.
5. By letter dated June 12, 2017, respondent appealed CalPERS’s denial of her disability retirement. Respondent noted that she had requested CHP to provide her with a reasonable accommodation for her injuries, but she was told by CHP that, “Due to your permanent restrictions, we are unable to provide a responsible accommodation that eliminates the need for you to crawl or to hyperextend your neck as these are essential functions of your position as a Commercial Vehicle Inspection Specialist.”

6. Mr. Suine, in his official capacity, signed Statement of Issues No. 2017-1223 on March 8, 2018. The Statement of Issues stated that the “issue on appeal is limited to whether at the time of the application, on the basis of an orthopedic (neck) condition, respondent Magee is substantially incapacitated from the performance of her usual and customary duties as a Commercial Vehicle Inspection Specialist for [the CHP].”

Injury of September 3, 2015

BACKGROUND AND DESCRIPTION OF WORK

7. Respondent is 56 years old. She began her career as a firefighter with CalFire as a limited term firefighter. She then worked with the State Fire Marshal’s office, and she worked for the Office of Statewide Health Planning and Development (OSHPD) as a Fire Life Safety Officer 1. After working for the OSHPD, respondent was a stay-at-home-mom for 19 years.

8. Respondent returned to the workforce as a Commercial Vehicle Inspection Specialist 1 (CVIS) with the CHP on October 31, 2013. There are four primary levels of inspections conducted by a CVIS. Level One inspections are the most common inspections performed by a CVIS. In a Level One inspection, a CVIS greets the driver of the vehicle, usually a truck, checks the driver’s license and the vehicle’s registration, inquires where the vehicle was coming from, walks around the vehicle, checks that the turn signals and lights are functioning properly, checks air lines, looks under the hood to check hoses and other equipment, and goes under the vehicle with a creeper to check items such as inside tire wear, brake lines, axle positioning, and supply lines. While under the vehicle, the CVIS moves and or rotates his or her head back and forth, extends his or her neck to look at various parts of the undercarriage, and pulls on objects under the vehicle. The CVIS uses pliers to move air lines and hoses and to tap on equipment to test it. Respondent testified that some trucks are lower to the ground and harder to get underneath. These trucks may require the CVIS to hyperextend his or her neck to perform the inspection. In a Level One inspection, a CVIS uses a creeper, flashlight, mirror, chalk, ruler, tape measure, and pliers. A CVIS carries a toolbox and wears a uniform, boots and gloves.

9. A Level Two inspection consists of walking around the vehicle and checking those items that can be viewed from the outside. A Level Three inspection is performed when it is raining. In this case, fluid leakages may not be detectable and the inspector is not required to go under the vehicle. A Level Four inspection is performed when Federal Government personnel requests that inspections focus on a particular function of a vehicle,
such as braking or steering. A CVIS does not have the authority to remove a vehicle from service. The CVIS presents the results of his or her inspection to a CHP officer who determines if a defect warrants a citation, a fix-it ticket, or for the vehicle to be taken out of service.

SEPTEMBER 2015 INJURY

10. On September 3, 2015, respondent was walking around a truck while conducting a Level One inspection. The vehicle’s hood was open and it had an extended side mirror. As she walked around, respondent hit the extended mirror with her forehead. The force of her contact with the mirror caused respondent to drop to her knees onto the cement. Respondent reported the incident to her supervisor, Sergeant Barry. She sought medical care at a Kaiser Permanente (Kaiser) Urgent Care department. She continued to receive medical treatment and evaluation for resulting injuries at Kaiser.

TREATMENT AND JOB RESTRICTIONS

11. Respondent took two weeks paid leave following the accident and then returned to full duty. She found extending her neck while inspecting the underside of commercial vehicles became too painful and she requested a light duty assignment. Respondent continued to receive medical care for her neck pain. She found that physical therapy and/or medications did not provide any relief; however, acupuncture relieved some of the pain.

12. In March 2016, based upon her continued neck pain, respondent was placed in a light duty assignment in an office of the CHP. CHP’s policy limits light duty assignments to a one-year duration. Respondent, therefore, filed for retirement on March 2, 2017. On May 31, 2017, CHP notified respondent that, with her medical restrictions, it could not accommodate her in a CVIS position. Respondent stated she would have continued to work for the CHP had she been able to continue working in the office, but she was not able to return to a position as a CVIS.

13. Respondent filed a workers’ compensation claim and received treatment and evaluation through the workers’ compensation process.

14. Respondent testified that she is unable to crawl or use a creeper as that requires her to hyperextend her neck. She does not believe she could do the job of a CVIS. She also testified that her injury has affected her ability to perform activities of daily living such as she must complete tasks at a slower pace; she cannot finish a project in one sitting; she sometimes experiences neck pain when she looks over her shoulder when driving; and she sometimes drops things due to a loss in her grip strength.

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Testimony of Ralph William Henson

15. Ralph William Henson testified at the hearing. Mr. Henson has been a CVIS with CHP for 23 years. He confirmed that the job required a CVIS to twist and turn under a vehicle to complete an inspection, but he stated the job duties did not require a CVIS to use a lot of strength. He stated many CVISs place their bodies on the creeper so that their heads hang down when they are under a vehicle performing inspections. Mr. Henson testified that if a person could not get on a creeper, that person could not be a CVIS.

16. Mr. Henson was paired with respondent for her training. He evaluated her performance and gave her a passing mark. He worked with respondent afterwards and, in his opinion, she did a good job. He did not know the reason respondent was assigned light duty. He had heard that respondent injured herself, but he did not know the details or the extent of her injury.

Stipulation

17. The parties stipulated at the hearing that CHP would not provide a reasonable accommodation for respondent's medical restrictions that would allow her to continue workings as a CVIS.

Dr. Sherman's Independent Medical Examination (IME)

Dr. Sherman's IME Examination and Opinions

18. By letter dated April 6, 2017, CalPERS requested Jerrold Sherman, M.D., to perform an independent medical evaluation of respondent and opine whether respondent was unable to perform any specific job duties required of a CVIS. Dr. Sherman was asked to give an opinion of whether respondent was "substantially incapacitated for the performance of his/her duties."

19. Dr. Sherman obtained his medical degree from the University of Southern California in 1965 and was licensed by the California Medical Board that same year. He is also licensed in Nevada and Louisiana. He is a board certified orthopedic surgeon who is also a Fellow of the American Academy of Orthopedic Surgeons. Dr. Sherman has served as a Qualified Medical Examiner and is a certified Independent Medical Examiner.

20. Dr. Sherman examined respondent on May 20, 2017, and wrote a report. His examination consisted of an interview with respondent, review of medical records, review of the physical requirements and Duty Statement of a CVIS, and a physical examination. Dr. Sherman began his evaluation by escorting respondent from the waiting area to his office so he could observe how she moved when she was not concentrating on being examined. He also observed how respondent moved when she was interviewed and when she responded to questions not necessarily directly related to the claimed disabling injury.
21. In his report, Dr. Sherman noted that x-rays and a Magnetic Resonance Imaging (MRI) study obtained in November 2015 showed degenerative changes at the C5, C6 and C7 levels of respondent's cervical spine that "were most pronounced at the C6 – C7 level and associated with facet arthropathy" at those levels. The reports also indicated "some disc bulging at the C5 - C6 and C6 - C7 levels." In his physical examination of respondent, Dr. Sherman noted that respondent has "100% normal pain-free range of motion" of her neck, "both shoulders, elbows, wrists, and small joints of the hands and fingers." He diagnosed that respondent suffered "concussion syndrome' without residual neurologic or mechanical deficit," had degenerative arthritis in her cervical spine that was unrelated to her September 3, 2015 accident, and had "resolved neck strain without neurologic or mechanical deficit."

22. In response to CalPERS's questions, Dr. Sherman opined that respondent had "no disability and is able to do full work activity without restrictions as a [CVIS]." He found she did not require any work restrictions, could lie on a creeper, and the changes in her lower cervical spine were of the type "commonly seen in individuals 55 years of age and come on with advancing age and are not disabling or restrictive in themselves." He wrote that respondent had recovered from the neck strain that resulted from the September 2015 accident. Dr. Sherman believed respondent was putting forth a good effort in the examination and that her "complaints seem reasonable given the degenerative changes in the lower portion of the cervical spine." Dr. Sherman indicated he spent 45 minutes with respondent and one hour reviewing medical records.

23. CalPERS provided additional medical records relating to respondent to Dr. Sherman and requested he prepare a supplemental report based on the new records. The additional records consisted of records from Ramin Raiszadeh, M.D., an Employer Memorandum dated May 31, 2017, and Kingston Crossing Wellness chart notes for August 2017. Dr. Raiszadeh’s reports reflected work restrictions he imposed on respondent in her Workers' Compensation case. The CHP memorandum advised that the CHP was unable to provide a reasonable accommodation for respondent with the restrictions imposed by Dr. Raiszadeh. The Kingston Crossing Wellness chart notes indicate respondent had "cervical radiculopathy associated with a claimed work injury." Dr. Sherman’s opinion did not change after he reviewed the additional medical reports.

24. By letter dated May 9, 2018, CalPERS requested Dr. Sherman review a medical report from the Spine Institute of San Diego in which a physician diagnosed respondent with chronic neck pain with radicular symptoms into the right arm resulting from her September 2015 accident. Dr. Sherman’s opinions did not change after he reviewed the additional medical record.

RELIABILITY OF DR. SHERMAN’S OPINIONS

25. Dr. Sherman has been an orthopedic surgeon for over 50 years, although he stopped performing surgeries 10 years ago. Prior to that time, Dr. Sherman performed "thousands" of orthopedic surgeries. He considers himself to be an expert on conditions that
exist before and after spine surgery, but he has not done reconstructive surgery on the spine
and is not an expert in that area.

26. Dr. Sherman’s testimony included a comprehensive description and
comparison of neuropathy, herniated disks, disk bulges and disk tears in laymen’s terms that
were informative and easily understood. In this regard, Dr. Sherman demonstrated an
understanding and mastery of the information he presented and an ability to relay that
information in a way to allow non-medical individuals to comprehend the material without
condescension to his audience. He was found to be a very effective expert witness.

27. Dr. Sherman’s testimony was consistent with his written reports. He
confirmed that his physical examination did not disclose any serious nerve injury to
respondent’s neck, but he stated an individual could have a less serious injury that
nonetheless causes weaknesses and neurological problems that do not show up during the
physical examination. For this reason, Dr. Sherman looks to tests such as x-rays, MRIs and
electrical studies. In respondent’s case, the MRI performed in November 2015 did not
disclose evidence of a significant injury to support respondent’s claims. Instead, the only
condition disclosed was that related to normal degenerative arthritis expected in an individual
respondent’s age.

28. Dr. Sherman agreed that respondent could not do the job of a CVIS with the
restrictions imposed by physicians in the workers’ compensation system; however, he
disagreed that those restrictions were warranted in light of the results of respondent’s
evaluations and MRI results.

29. On cross-examination, Dr. Sherman was questioned about his disciplinary
record with the California Division of Workers’ Compensation (DWC). Dr. Sherman
confirmed he had been placed on a probation by the DWC, but he stated his probation was
recently terminated. He denied that he engaged in overbilling and that his probationary
period was related to overbilling. Dr. Sherman testified the accusation included a criticism
of his report writing and “possible billing discrepancies”; however, he further stated he
refused to settle the case with the DWC unless the settlement excluded an admission of either
of these criticisms. Dr. Sherman stated the terms of his probation included that he take an
anger management course, a workers’ compensation billing course and provide the DWC a
copy of every workers’ compensation report he prepared for one year.

30. Respondent testified that the 45 minutes she spent with Dr. Sherman for her
examination were the “worst 45 minutes of [her] life.” Respondent described Dr. Sherman
as lacking professionalism, displaying frustration with respondent, and rolling his eyes in
disbelief when she answered his questions. She stated Dr. Sherman’s conduct led her to
believe he might “kick [her] out of the exam.” She believed Dr. Sherman had “his mind
already made up” when she entered his office.

31. While the revelations about Dr. Sherman’s discipline by the DWC are
concerning, he was not disciplined by the California Medical Board, and the claimed
allegations of the DWC relate, at most, to billing issues under the California Labor Code. These issues are not at issue in this case and do not diminish Dr. Sherman’s expert medical opinion relating to cervical spine injuries.

Respondent’s Medical Records

32. Respondent went to her medical provider for treatment and evaluation on September 3, 2015, after she ran into the side mirror of the truck at work. She was diagnosed with “neck muscle strain.” She took some time off from work to rest her muscles.

33. On September 24, 2015, respondent told her physician she wanted to try to return to full duty work.

34. On September 29, 2015, respondent returned to Kaiser. She reported she went to work on September 28, 2015, but her left hand became swollen and her “whole neck locked.” The Kaiser physician reported that respondent “insist[ed] on off work 2 days and want[ed] MRIs and x-rays as ‘she knows there is something wrong.’” The physician told respondent that scheduling an MRI was premature. The physician placed respondent on modified work duty that included a restriction that she not engage in activities that required repetitive neck motions or prolonged positions in which her neck was turned. A subsequent note in respondent’s file indicated she returned to the doctor’s office that day “insisting to be returned to regular duty. Work restrictions were removed.”

35. Respondent returned to full duty work. She occasionally told her doctors that her neck pain and related symptoms were better, and she occasionally told them her symptoms were worse. A note dated February 18, 2016, indicated that respondent had a history of “chronic lower back pain.”

36. On March 11, 2016, respondent reported to Dayang Kim Mariena Jaya, M.D., that her symptoms were worsening. Dr. Jaya placed respondent on modified work status that prohibited climbing, bending, stooping or crawling.

37. On April 22, 2016, Dr. Jaya kept respondent on modified work status, but the restriction was limited to, “No crawling.” The no crawling restriction was described as “permanent” and remained in place through the administrative hearing. Respondent reported periodic flare-ups of her neck and hands, some related to respondent engaging in activities such as painting lumber, cleaning her bathtub and driving.

Parties’ Positions

RESPONDENT’S POSITION

38. Respondent argued she loved her job and would have continued to do it if she were able. She asserted Dr. Sherman’s conclusions were unreliable based upon his history of discipline with the DWC and as contradictory to the opinions of respondent’s treating and/or
workers' compensation Independent Medical Examiners. Respondent asserted that, because CHP decided she was not able to perform the essential functions of her job, she established that she was disabled and entitled to disability retirement. Respondent argued it was unfair to deny her disability retirement because she did not present testimony of a physician at the hearing as she could not afford to hire a doctor. Respondent further argued that there was no damage to CalPERS to grant her the disability retirement because her monthly benefit would not change; respondent believed she might be entitled to a tax advantage if she received a disability retirement.

**CALPERS' POSITION**

39. CalPERS argued that the only competent medical testimony that was provided was from Dr. Sherman. Because all other medical information was received as administrative hearsay, it was not possible to base a finding of fact on the information contained in respondent's medical records. CalPERS further stated that the legal standard used in workers' compensation cases to rate patient injuries is not the same legal standard applied in CalPERS cases, and therefore, the opinions of the workers' compensation doctors does not constitute "competent medical opinion" under the relevant CalPERS statutes.

**LEGAL CONCLUSIONS**

**Burden of Proof**

1. Respondent has the initial burden to establish that she was, at the time of her application, permanently disabled or substantially incapacitated from the performance of her usual and customary duties as a CVIS. (Evid. Code, §§ 500; 550; Mansperger v Public Employees' Retirement Sys. (1970) 6 Cal.App.3d 873.) The standard of proof is a "preponderance of the evidence." (Evid. Code, § 115.)

**Statutory Authorities**

2. Government Code section 20026 provides in 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. Government Code section 21151, subdivision (a), provides that "[a]ny patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, regardless of age or amount of service." Subsection (c)(2) provides that section 21151 applies to certain state miscellaneous members employed by the CHP.
4. Government Code section 21152, subdivision (d), provides that an application for disability retirement can be filed by a CalPERS member.

5. Government Code section 21154 provides in part:

   The application shall be made only (a) while the member is in state service,... On receipt of an application for disability retirement of a member... the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for the performance of duty. . . .

6. Government Code section 21156, subdivision (a)(1), provides:

   If the medical examination and other available information show to the satisfaction of the board... that the member in the state service 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, . . .

7. Government Code section 21166 provides:

   If a member is entitled to a different disability retirement allowance according to whether the disability is industrial or nonindustrial and the member claims that the disability as found by the board, or in the case of a local safety member by the governing body of her or her employer, is industrial and the claim is disputed by the board, or in case of a local safety member by the governing body, the Workers’ Compensation Appeals Board, using the same procedure as in workers’ compensation hearings, shall determine whether the disability is industrial.

   The jurisdiction of the Workers’ Compensation Appeals Board shall be limited solely to the issue of industrial causation, and this section shall not be construed to authorize the Workers’ Compensation Appeals Board to award costs against this system pursuant to Section 4600, 5811, or any other provision of the Labor Code.

Case Law Authorities

8. In order for respondent to receive a disability retirement, she must establish she is disabled and “substantially incapacitated for the performance of duty” as a CVIS with
the CHP. "Incapacitated" means the employee has a substantial inability to perform the usual duties of the position. When the employee can perform the customary duties, even though doing so may be difficult or painful, the employee is not "incapacitated" and does not qualify for a disability retirement. *(Mansperger v. Public Employees’ Retirement System (1970) 6 Cal.App.3d 873, 886-887.)*

9. In applying the *Mansperger* standard, it has been held that the fact that a person has a limiting and painful physical condition, or an emotionally troubling psychological condition that limits, but does not preclude, the person’s ability to perform his or her usual duties; or makes performing the usual and customary duties of one’s occupation more difficult or unpleasant physically or mentally does not necessarily constitute a substantial incapacity for the purposes of a disability retirement.

10. The fact that the physical or psychological condition may preclude the applicant from performing some but not all usual and customary job duties does not necessarily mean the applicant is substantially incapacitated within the meaning of *Mansperger* and section 21156. *(Hosford v. Board of Administration (1978) 77 Cal.App. 3d 854, 861-863.)* The fact that a condition increases an individual’s chances of further injury does little more than demonstrate that the injury is prospective, hence, speculative, and presently not in existence. Fear of further injury or fear of aggravation of an existing injury is insufficient to support a finding of disability. *(Ibid.)*

11. The *Hosford* court also rejected the employee’s contention that he was substantially incapacitated from performing his usual and customary duties because his medical conditions created an increased risk of future injury. The court held the disability must be presently existing and not prospective in nature.

**Workers’ Compensation Proceeding**

12. The medical evaluations and records provided by respondent were limited to those related to her workers’ compensation claims. The retirement system was not a party to the workers’ compensation proceedings. The findings and conclusions in the workers’ compensation proceeding are not binding in this proceeding “because the focus of the issues and the parties is different.” *(Smith v. City of Napa (2004) 120 Cal.App.4th 194, 207.)*

13. Determinations made by the Workers’ Compensation Appeals Board and those made by CalPERS or the contracting agency are different. A finding by the Workers’ Compensation Appeals Board does not preclude a finding by CalPERS or the contracting agency that the employee is capable of performing his job. There is no res judicata or collateral estoppel from Workers’ Compensation Appeals Board findings. *(Petrillo v. Bay Area Rapid Transit (1988) 197 Cal.App.3d 798, 812.)* Similarly, medical reports prepared for use in workers’ compensation cases have a different focus than those before CalPERS.
Evaluation

14. Dr. Sherman performed an independent evaluation of respondent. He reviewed respondent's medical records and performed a physical examination. His was the only expert testimony presented at the administrative hearing. Dr. Sherman competently testified about his findings and opined that respondent was not disabled under the CalPERS standard and was able to perform her duties as a CVIS without restrictions. He specifically opined that respondent could lie on a creeper and perform required inspections. Dr. Sherman attributed degenerative changes in respondent's cervical spine to the natural aging process. He stated those changes were not disabling or restrictive in themselves. Dr. Sherman found no other evidence to support a finding that respondent was substantially incapacitated from the performance of her usual and customary duties as a CVIS. Dr. Sherman’s period of probation imposed by the DWC was unrelated to his competency to perform an orthopedic examination and evaluation. Despite his serving a period of probation, Dr. Sherman’s opinion was credible and persuasive and was based upon substantial evidence.

15. Respondent’s medical records were received as administrative hearsay and, on their own, are not sufficient to support a finding. (Govt. Code § 11513, subd. (d).) Allowing medical records on their own to support a finding denies the opposing side the ability to cross-examine the authors of the records about the basis for their opinions or restrictions imposed. In CalPERS matters, without the author’s testimony, questions regarding what definition or standard was used by the physician to provide an opinion or impose a work restriction remain unanswered. In this case, in light of the fact that the physicians were evaluating respondent for workers' compensation matters, it is unknown whether the work restrictions were imposed to support or determine workers' compensation impairment percentages, as prophylactic restrictions to prevent possible future injury, or as an indication of a disability. These unanswered questions are relevant to the issues in respondent’s disability retirement claim. As a result, there was no persuasive evidence respondent was disabled and incapacitated from the performance of her work duties under the standards applicable to CalPERS disability claims.

16. Respondent suggested that CalPERS was required to grant her a disability retirement because CHP had determined it could not reasonably accommodate her with her work restrictions. This is not an accurate reflection of the law. Respondent may have other legal channels open to her to pursue reinstatement with CHP; however, whether other legal channels exist does not compel CalPERS to find respondent is entitled to a disability retirement under the Public Employees’ Retirement Law, Government Code section 20000, et. seq.

17. Upon this record, the only finding supported by the evidence is that respondent failed to prove by a preponderance of the evidence, and by competent medical evidence, that she is substantially incapacitated for the performance of her usual and customary duties as CVIS with CHP within the meaning of the Government Code, as interpreted by Mansberger and Hosford, supra.
ORDER

Lisa K. Magee's appeal of CalPERS's determination that she was not permanently disabled or incapacitated from performance of her duties as a Commercial Vehicle Inspection Specialist for the California Highway Patrol at the time she filed his application for a disability retirement is denied.

DATED: August 8, 2018

Susan J. Boyle
Administrative Law Judge
Office of Administrative Hearings