

ATTACHMENT A

THE PROPOSED DECISION

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

In the Matter of the Application for Industrial Disability

Retirement of:

JASON T. CICHOSKI, Respondent,

and

**SALINAS VALLEY STATE PRISON, CALIFORNIA DEPARTMENT
OF CORRECTIONS AND REHABILITATION, Respondent.**

Case No. 2019-0305

OAH No. 2019050462

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on August 12, 2019, in Monterey, California.

Rory J. Coffey, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

There was no appearance by or on behalf of respondents Jason T. Cichoski or the Salinas Valley State Prison, California Department of Corrections and

PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED

August 26, 2019
Kimball Shene

Rehabilitation. This matter proceeded as a default proceeding pursuant to Government Code section 11520.

The record closed and the matter was submitted for decision on August 12, 2019.

FACTUAL FINDINGS

1. Respondent Jason T. Cichoski (respondent) was employed as a correctional officer at the Salinas Valley State Prison, California Department of Corrections and Rehabilitation. By virtue of his employment, respondent is a state safety member of CalPERS subject to Government Code section 21151.
2. On September 5, 2018, respondent signed an application for industrial disability retirement. Respondent described his disability as a work-related injury to his lower back. Respondent was evaluated by orthopedic surgeon Don T. Williams, M.D., at the request of CalPERS. Dr. Williams concluded that respondent is not substantially disabled from performing his usual duties as a correctional officer.
3. On January 28, 2019, CalPERS sent a determination letter to respondent, explaining that based on respondent's medical evidence and the opinion of Dr. Williams, a determination had been made that respondent is not disabled for performance of duty by an orthopedic condition.
4. Respondent submitted an appeal of the denial on February 19, 2019.
5. On March 11, 2019, respondent retired for service.

RECEIVED THE COUNTY CLERK OF CALIFORNIA
COUNTY OF CALIFORNIA
CLERK OF SUPERIOR COURT
SAN JOSE, CALIFORNIA

6. Respondent did not appear at the hearing and presented no evidence in support of the application. Consequently, the application must be denied.

LEGAL CONCLUSIONS

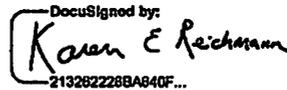
1. Pursuant to Government Code section 21151, subdivision (a), a state safety member who becomes incapacitated from the performance of his or her usual duties as the result of an industrial disability shall be retired for disability. The burden of proving disability is on the employee to establish, by competent medical evidence, that he or she is incapacitated. (*Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 691.)

2. As set forth in Finding 6, respondent did not appear at hearing and did not present competent medical evidence in support of his application. Accordingly, he has not met his burden of establishing that he is entitled to an industrial disability retirement.

ORDER

The application of Jason T. Cichoski for industrial disability retirement is denied.

DATE: August 22, 2019

DocuSigned by:

213282228BA840F...

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings