

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:

JOHN A. SERRANO, Respondent

and

SAN DIEGO UNIFIED SCHOOL DISTRICT,

Respondent

Case No. 2019-0520

OAH No. 2019070950

PROPOSED DECISION

Marion Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 25, 2019, in San Diego, California.

Austa Wakily, Senior Staff Attorney, represented petitioner Keith Riddle, Chief, Disability and Survivor Benefits Division, Board of Administration, California Public Employees' Retirement System (CalPERS), State of California.

John A. Serrano, respondent, represented himself.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
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There was no appearance by San Diego Unified School District (SDUSD). Upon proof of compliance with Government Code sections 11504 and 11509, this matter proceeded as a default against SDUSD pursuant to Government Code section 11520.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on November 25, 2019.

PROTECTIVE ORDER SEALING CONFIDENTIAL RECORDS

Exhibits B and C, which contain Mr. Serrano's medical records, were received and contained confidential information. It is impractical to redact the information from these exhibits. To protect his privacy and the confidential personal information from inappropriate disclosure, Exhibits B and C 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 the documents are protected from release to the public.

ISSUE

At the time of Mr. Serrano's application for disability retirement, was he permanently disabled or incapacitated from performing the usual and customary duties of a Campus Police Officer for SDUSD due to his psychological (PTSD, acute stress reaction) conditions?

SUMMARY OF DECISION

Mr. Serrano had the burden to prove that, at the time of the application, he was permanently disabled or incapacitated from performing his regular and customary job duties as a Campus Police Officer due to a psychological (PTSD, acute stress reaction) condition. The competent medical evidence presented did not support his claim that he was permanently disabled or incapacitated from performing the regular and customary duties of a campus police officer due to a psychological condition. Mr. Serrano's claim for disability retirement is denied.

FACTUAL FINDINGS

Preliminary Matters

1. Mr. Serrano was employed by SDUSD as a Campus Police Officer. By virtue of his employment, Mr. Serrano was a local safety member of CalPERS subject to Government Code section 21151.

2. On October 24, 2018, Mr. Serrano filed an Industrial Disability Retirement Election Application with CalPERS. He retired from service effective December 31, 2018, and has been receiving his retirement allowance since that date. Mr. Serrano claimed the right to receive a disability retirement because he suffered a "Post Traumatic Stress Disorder due to [*sic*] critical incident – Acute Stress Reaction" that began on July 17, 2017, when he was working as a campus police officer at Hoover High School. Mr. Serrano described the event as follows: He and his partner attempted to disperse a large group of students but were unable to do so. They followed the group across the street, and Mr. Serrano and his partner became separated. Mr.

Serrano heard his partner "yell for cover. . ." and Mr. Serrano observed his partner with a gun pointed at a suspect who was on the ground with a bloody knife. Mr. Serrano learned that the suspect had stabbed four students, and Mr. Serrano became fearful that the crowd of students would become violent.

Mr. Serrano claimed that "[t]his incident created undue mental trauma to me." He wrote that during and after the incident he had an intense feeling of anxiety and a depressed mood, and as a result he is "unable to return to work as a police officer due to acute stress reaction." When asked how the injury affected his ability to perform his job, he wrote, "[D]ue to acute stress reaction the trauma of the listed events has critically impacted my ability to ever return to work." Mr. Serrano identified Stephen M. Pfeiffer, Clinical Psychologist, as his treating physician.

3. CalPERS obtained medical records and reports related to Mr. Serrano's condition and selected Jaga Nath Glassman, M.D., a psychiatrist, to perform a disability evaluation. Dr. Glassman provided CalPERS with narrative reports of his findings and conclusions. After reviewing all of those documents, CalPERS determined that when Mr. Serrano filed his application for a disability retirement, he was not permanently disabled or incapacitated from performing the usual and customary duties of a campus police officer.

4. On February 20, 2019, CalPERS notified Mr. Serrano that his application for disability retirement was denied. CalPERS advised him of his right to appeal that adverse determination.

5. On March 20, 2019, Mr. Serrano timely filed his appeal, and requested an administrative hearing.

6. On July 19, 2019, petitioner filed the statement of issues in his official capacity. The statement of issues, notice of hearing, and other jurisdictional documents were served on all respondents. SDUSD did not respond to the statement of issues or appear in this matter and the matter proceeded against it as a default.

Job Description Documents

7. The Essential Functions of a campus police officer and the Physical Requirements of that position outlined the tasks and physical requirements of that position. Dr. Glassman relied upon those documents in formulating his opinions.

CalPERS's Medical Evaluation Conducted by Dr. Glassman and His Initial and Supplemental Reports

8. Dr. Glassman is a board certified psychiatrist. He has a private practice and is an Assistant Clinical Professor in the University of California San Diego, School of Medicine Psychiatry Department. He began doing forensic work in 1992 and has provided expert opinion by testifying over 100 times. He has evaluated and treated law enforcement officers and prison guards. On January 25, 2019, Dr. Glassman conducted an Independent Medical Examination (IME) in Psychiatry of Mr. Serrano, and prepared a report for CalPERS that same day.

9. The examination included an interview during which Dr. Glassman asked Mr. Serrano about his chief complaint, relevant history, past medical and psychiatric history, and family and social history, and performed a mental status examination. Dr.

Glassman reviewed two reports from Stephen M. Pfeiffer, Ph.D.¹, who had evaluated Mr. Serrano six weeks after the incident. Dr. Glassman reviewed Dr. Pfeiffer's August 28, 2017, report, and also noted: "Dr. Pfeiffer reviewed an extensive amount of medical records, and summarized them in a report dated December 4, 2017, related to Mr. Serrano's Workers' Compensation claims."

10. As the interview began, Mr. Serrano advised Dr. Glassman that Dr. Glassman was the "third doctor" to do an evaluation regarding Mr. Serrano's request for disability retirement. Mr. Serrano stated that the process had been difficult. He then began sobbing and said, "I don't know what else I can do except be a police officer!" He indicated that he did not think he would ever be able to work as a police officer again following the traumatic incident on July 17, 2017.

11. Mr. Serrano provided the following explanation of the incident: He was working as a campus police officer at Hoover High School and had been told by his supervisor that there were rumors that there would be a fight after school; as school was dismissed, he observed a group of about 200 students moving from the campus toward the street; he attempted to radio for assistance and then received an emergency message that his partner needed help; he located his partner and observed his partner with a gun pointed at a suspect who was on the ground; and there was "an unpredictable crowd of kids, really a riot." He learned that four students had been stabbed. Mr. Serrano felt emotionally overwhelmed, with severe panic and fear. He felt the need to "get out of there." This was his last day of work.

¹ In his October 24, 2018, Industrial Disability Retirement Election Application, Mr. Serrano identified Dr. Pfeiffer as his "treating physician."

12. Mr. Serrano is married, with four children ranging in ages from 12 to 28. He previously worked as a police officer for the City of San Diego for 16 years, and then as an investigator for the San Diego District Attorney's Office for eight years. About five years ago he decided to take his pensions from these two jobs and become a campus police officer for the SDUSD.

13. Dr. Glassman performed a "psychiatric interview" which he explained focused especially on impairments and their effect on Mr. Serrano's functioning ability. This type of interview primarily involves "self-reporting" by the patient as there are few objective matters to evaluate. As a result, the interviewer needs to keep in mind the patient's motives and truthfulness. Mr. Serrano began seeing Mark Foreman, Ph.D. of Focus Psychological Services (FOCUS)² after the incident, and continued to meet with him every other week. Mr. Serrano's only prior therapy was when he was in his 20s "to deal with police officer stresses." He denied currently taking any psychiatric medications, but stated that in the past he had taken "a low dose of anti-anxiety medication" for a brief period of time for the "day to day stress of being a police officer."

14. Dr. Glassman performed a mental status examination of Mr. Serrano. He explained that this exam involves the direct, objective observations of the person by the physician, and it includes the person's grooming, physical condition, mood, and thought processes. Mr. Serrano arrived on time, was clean, neat, and well-groomed. He maintained good eye contact, smiled, was animated and spontaneous, and had a responsive mood. Mr. Serrano's thought processes were coherent, relevant and goal-

² Focus Psychological Services provides counseling services for current and former police officers.

directed, with no psychotic symptoms. He did become tense, distraught, and tearful when talking about the incident at the school. Mr. Serrano seemed to become "vague and evasive and minimizing" when questioned about his mental health history prior to July 2017.

15. Mr. Serrano stated that he was functioning mentally and physically until the July 2017 incident. His medical records revealed that he had previously been diagnosed with an anxiety disorder and had been prescribed anti-depressants on at least two occasions. In January 2015, a Dr. Marco Gonzales, noted that Mr. Serrano presented "with an anxiety disorder," and was experiencing a sleep disturbance and palpitations at the time. As early as December 2015, Dr. Nathan Peter Huff Freeman³ noted that Mr. Serrano had been "taking Wellbutrin for a month and noted improvement," and Dr. Freeman recommended Mr. Serrano seek treatment with mental health specialists. Dr. Glassman noted that Mr. Serrano did not mention this diagnosis or treatment during their interview. Although in August 2017 Dr. Pfeiffer diagnosed an "acute stress disorder in remission," Dr. Glassman opined there is no such diagnosis, as an acute stress disorder does not return unless there is another traumatic incident.

16. In April 2019, Dr. Glassman was asked to review a medical report of Mr. Serrano prepared by Raphael Morris, M.D., a psychiatrist, and to note whether this report changed the opinions Dr. Glassman had previously provided. After his review, Dr. Glassman prepared a supplemental report dated April 24, 2019, wherein he concluded that his initial opinions had not changed. Dr. Morris saw Mr. Serrano in

³ Dr. Freeman specializes in family medicine and is Mr. Serrano's primary care physician.

April 2018, almost nine months prior to Dr. Glassman's evaluation. Dr. Morris noted that prior medical treatment notes revealed that Mr. Serrano had longstanding anxiety symptoms, and Dr. Glassman surmised this information had led to Dr. Morris's additional diagnosis of a generalized anxiety disorder. In his supplemental report, Dr. Glassman opined that Mr. Serrano could no longer be considered to have an acute stress disorder, as after two years any symptoms could no longer be considered "acute." While he did not doubt the generalized anxiety disorder diagnosis, "this predated the incident in July 2017, and he (Mr. Serrano) was always able to work throughout his adult life despite his anxiety."

17. Mr. Serrano told Dr. Glassman that in all his years of police work, nothing had affected him the way this incident did. While Dr. Glassman was aware that "children" were stabbed during the incident, he noted that Mr. Serrano did not personally witness the stabbings and was not a part of the incident itself, having arrived on the scene after his partner had apprehended the suspect. Dr. Glassman questioned that Mr. Serrano would view such an incident as "traumatic." Regardless, an acute stress reaction at the time of the incident would not remain "acute" two to three months, much less two years, after the incident.

Although Mr. Serrano initially stated he did not know what else he could do except be a police officer, he told Dr. Glassman that he has a Master's Degree in public administration and previously taught Criminal Justice in junior college. Dr. Glassman reported that Mr. Serrano "is thinking that perhaps he can work as some type of teacher" as he likes to help kids.

18. Dr. Glassman noted that there were inconsistencies in Mr. Serrano's self-reporting, including the status of his mental health prior to the incident and information obtained from his medical records. His self-reporting was not truthful and

his history was inconsistent and conflicting. Mr. Serrano suffered from anxiety, but it did not impair his functioning as a police officer.

Dr. Glassman concluded that he cannot be certain that Mr. Serrano's allegations of symptoms and his report of disability as a result of these symptoms are genuine, and therefore is unable to have a medical certainty about a psychiatric diagnosis or any resulting impairments. As a result, in response to questions submitted by CalPERS, Dr. Glassman responded as follows: "I cannot opine that he is substantially incapacitated for performance of his duties" and "[T]here are no specific job duties that I can be confident that the member is unable to perform."

Respondent's Evidence

REPORT AND TESTIMONY OF STEPHEN PFEIFFER, PH.D.

19. Dr. Pfeiffer has been licensed as a clinical psychologist since 1978 and is currently in private practice. He graduated from New York University and California School of Professional Psychology. Dr. Pfeiffer conducts fitness-for-duty examinations for county employees and also sees a "fair number" of law enforcement personnel and state prison workers. Dr. Pfeiffer met with Mr. Serrano on August 28, 2017, about five weeks after the incident, and conducted a comprehensive psychological consultation, including standard testing and a face-to-face interview. Dr. Pfeiffer prepared a written report dated August 28, 2017, and his testimony was consistent with that report.

20. The testing revealed no depression and minimal anxiety. Mr. Serrano advised Dr. Pfeiffer that nightmares started four years before the July 2017 incident and ceased after he stopped working on July 17, 2017. Based on the interview and the results of the testing, Dr. Pfeiffer's diagnosis was "Stress Reaction in Remission." He stated that the acute stress reaction which Mr. Serrano suffered "but is not now

suffering, was caused initially by the workplace confrontations that occurred on 7/17/17. However, currently, that psychological distress that he experienced at that time have [sic] dissipated and are no longer impacting him in any measurable sort of way. All symptoms have reduced to normal levels." Regarding Mr. Serrano's disability status, Dr. Pfeiffer opined: "I do not believe that Mr. Serrano has a disability at the current time. I do believe, however that he should not return to work as a campus police officer, as this work is not suitable to him. He reports that he has had four years of intermittent levels of anxiety while serving in the role of a campus police officer. . . I believe he recognizes that this job is not a good fit for him." Dr. Pfeiffer concluded, "I do not see he has any permanent disability."

Mr. Serrano disagreed with Dr. Pfeiffer's diagnosis, and on April 18, 2018, met with Raphael Morris, M.D., a psychiatrist and qualified medical examiner (QME).⁴

TESTIMONY OF RESPONDENT, JOHN SERRANO

21. Mr. Serrano suffered acute stress reaction at Hoover High School on July 17, 2017. He has been a campus police officer since 2013, and stated, "I am not a rookie and I know how to deal with these situations." As a campus police officer, he was normally assigned to Crawford High School but was asked by his supervisor to work at Hoover High School on the day of the incident. There were about 1,000 students attending summer school, and at the start of the day, Mr. Serrano was told that there were rumors of a fight at the school. As students were dismissed, Mr.

⁴ Dr. Morris did not testify at the hearing. He prepared a written report which was received as administrative hearsay, and was only considered to the extent it supplemented and/or explained other non-hearsay evidence.

Serrano observed about 200 students leaving in a group. He and his partner attempted to stop them in the school's parking lot, but were unsuccessful. The group crossed the street from the school. He and his partner met near a restaurant across the street to again try to disperse the crowd. Mr. Serrano's partner left the area and Mr. Serrano was not sure where he went. His partner then radioed that he needed help. Mr. Serrano drove from the restaurant parking lot and finally found his partner around the corner. He observed his partner "with gun out pointed at a suspect who was on the ground with a bloody knife." Mr. Serrano handcuffed the suspect and then learned that the suspect had stabbed four students and was attempting to flee when he was apprehended. He said the "crowd visibly surrounded us." He and his partner tried to disperse the crowd, and "called the San Diego Police Department (SDPD) as soon as we felt this was out of control." He said he "felt the crowd was converging on us and felt he wanted to get out." He felt anxiety and overwhelming fear. The SDPD's uniformed police supervisors arrived. Mr. Serrano said he has never been in this type of situation, "my role is to protect kids." After several hours he went to the Mid-City Division of the SDPD and was released by his supervisors. He does not remember a lot. He got in his truck and called his wife. He stopped briefly at a pool near his house and hoped it would help him relax. He then went home; he was emotionally drained. He wanted to sit and do nothing. He turned on the television and stared at a blank screen.

22. His supervisor called and told him to be at the Hoover campus at 6:00 a.m. "for a possible retaliation." He called the station and told them that he just could not go in. After a few days he went to Sharp Medical Group "to start the process." He was sent to see Dr. Pfeiffer but was not able to see him for four weeks. He reached out

to Focus Psychological Services (FOCUS),⁵ and met with Mark Foreman, Ph.D. Mr. Serrano continues to see Dr. Foreman about two times per month.

23. Mr. Serrano disagreed with Dr. Pfeiffer's diagnosis and asked worker's compensation insurance for a second opinion. "I was looking for treatment but Dr. Pfeiffer wouldn't offer any." In April 2018 he saw Dr. Morris. Dr. Morris did not send his reports to worker's compensation within the required time "so his report was not considered." Mr. Serrano feels that Dr. Pfeiffer had underestimated his stress disorder. "The only report they reviewed was Dr. Pfeiffer's." Mr. Serrano began to run out of sick leave and chose to file for disability. His request was denied. CalPERS advised they needed an updated evaluation, and Mr. Serrano met with Dr. Glassman. Mr. Serrano alleges that Dr. Glassman told him he would let CalPERS know that Mr. Serrano was permanently disabled, so Mr. Serrano was surprised that his appeal was denied. "I was wounded on duty. I was forced to leave my position after 5 years." He continues to struggle with his symptoms and states: "I have been disabled since this incident and I cannot receive retirement disability."

TESTIMONY OF LORI SERRANO, RESPONDENT'S SPOUSE

24. Lori Serrano is Mr. Serrano's spouse. When Mr. Serrano returned home on the day of the incident, she observed that he had a "glazed over" look and was not himself. Ms. Serrano had never seen him like this before. Ms. Serrano stated that "[N]o one offered him help. . ." and "the system failed him and we had to figure it out on our own." Mr. Serrano's supervisor told him to reach out to the worker's compensation

⁵ Focus Psychological Services provides counseling services for active and retired SDPD officers.

doctors, and Mr. Serrano met with Dr. Pfeiffer about six few weeks after the incident. Mr. Serrano also met with Dr. Foreman at FOCUS, and has been seeing Dr. Foreman consistently for two years. Ms. Serrano reported that Mr. Serrano continues to "wake up screaming" and "he is still not right."

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Absent a statutory presumption, an applicant for a disability retirement has the burden of proving by a preponderance of the evidence that he or she is entitled to it. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

Applicable Statutes

2. Government Code section 20026 defines "disability" and "incapacity for performance of duty," for purposes of a retirement, to mean "disability of permanent or extended and uncertain duration" based on "competent medical opinion."

3. Government Code section 21150, subdivision (a), provides that a member who is "incapacitated for the performance of a duty" shall receive a disability retirement. Section 21151, subdivision (a), provides that such incapacitated member shall receive a disability retirement regardless of age or amount of service.

4. Government Code section 21152, provides in part: Application to the board for retirement of a member for disability may be made by:

(a) The head of the office or department in which the member is or was last employed, if the member is a state member other than a university member.

[¶] . . . [¶]

(d) The member or any person in his or her behalf.

5. Government Code section 21154 provides in part:

The application [for disability retirement] shall be made only (a) while the member is in state service, . . . On receipt of an application for disability retirement of a member, other than a local safety member with the exception of a school safety 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. On receipt of the application with respect to a local safety member other than a school safety member, the board shall request the governing body of the contracting agency employing the member to make the determination.

6. Government Code section 21156, provides that if the medical evaluation or other evidence demonstrates that an eligible member is incapacitated physically or mentally, then CalPERS shall immediately retire the member for disability. The determination of incapacitation shall be based on competent medical opinion.

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 his 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.

Appellate Authority

8. "Incapacitated" means the applicant for a disability retirement has a substantial inability to perform his or her usual duties. 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; *Sager v. County of Yuba* (2007) 156 Cal.App.4th 1049, 1057.)

Interplay between CalPERS's Disability Retirement and Workers' Compensation

9. Although the Public Employees' Retirement Law and the Workers' Compensation law are aimed at the same general goals with regard to the welfare of employees and their dependents, they represent distinct legislative schemes. Courts may not assume that the provisions of one apply to the other absent a clear indication from the Legislature. (*Pearl v. W.C.A.B.* (2001) 26 Cal.4th 189, 197.)

10. Receipt of any type of disability in a related workers' compensation proceeding does not establish qualification for a disability retirement. (*Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689; *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854. Workers' compensation appeal board determinations 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; *Hawpe v. City of Napa* (2004) 120 Cal.App.4th 194, 207.)

11. Generally, a Workers' Compensation Appeals Board proceeding concerns whether the employee suffered *any* job-related injury, and if that injury resulted in some permanent residual loss, the Workers' Compensation Appeals Board awards the employee a permanent disability rating. Retirement boards, on the other hand, focus on a different issue: whether an employee has suffered an injury or disease of such magnitude and nature that he is incapacitated from substantially performing his job responsibilities. Because of the differences in the issues, "[a] finding by the [Workers' Compensation Appeals Board] of permanent disability, which may be partial for the purposes of workers' compensation, does not bind the retirement board on the issue of the employee's incapacity to perform his duties." (*Bianchi v. City of San Diego* (1989) 214 Cal App 3d 563, 567, citations omitted.)

12. Although the schemes of the retirement boards and the Workers' Compensation Appeals Board are independent and serve different functions, their purposes are in harmony rather than in conflict and applying workers' compensation laws by analogy to retirement board cases may be appropriate as it seems clear that the tendency is to view the two bodies of law as compatible rather than the opposite. (*Heaton v. Marin County Employees' Retirement Bd.* (1976) 63 Cal.App.3d 421,428.)

Competent Medical Opinion

13. CalPERS makes its determination whether a member is disabled for retirement purposes based upon "competent medical opinion." That determination is based on the evidence offered to substantiate the member's disability. (*Lazan v.*

County of Riverside (2006) 140 Cal. App. 4th 453, 461, distinguished on other grounds.)

14. Evidence Code section 801 provides:

If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:

(a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and

(b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion.

16. The determinative issue in each case must be whether the witness has sufficient skill or experience in the field so that his testimony would be likely to assist the trier of fact in the search for the truth, and "no hard and fast rule can be laid down which would be applicable in every circumstance." (*Mann v. Cracchiolo* (1985) 38 Cal.3d 18, 37-38.)

16. A properly qualified expert may offer an opinion relating to a subject that is beyond common experience, if that expert's opinion will assist the trier of fact but

the expert's opinion may not be based on assumptions of fact that are without evidentiary support or based on factors that are speculative or conjectural, for then the opinion has no evidentiary value and does not assist the trier of fact. (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 529-530.)

17. Government Code section 11513, subdivision (d), provides in part: "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."

18. Unless admissible over objection in civil actions, hearsay evidence shall not be sufficient in itself to support a finding in an administrative proceeding. (*Carl S. v. Commission for Teacher Preparation & Licensing* (1981) 126 Cal.App.3d 365,371.)

19. Hearsay evidence is not competent evidence that can independently support a finding. (*McNary v Department of Motor Vehicles* (1996) 45 Cal.App.4th 688.)

20. Determining both the nature of Mr. Serrano's medical condition, and whether that condition incapacitated him physically or mentally for the performance of his duties, is sufficiently beyond common experience that expert testimony is required. Mr. Serrano's primary care physician did not testify or offer a written report, and Mr. Serrano's medical records were received as administrative hearsay. Thus, they were only considered to the extent they supplemented and/or explained other non-hearsay evidence.

Evaluation

21. In order to qualify for a disability retirement, Mr. Serrano must demonstrate that he was permanently disabled or incapacitated from performing the

usual and customary duties of a campus police officer when he filed his application. Dr. Glassman concluded that Mr. Serrano was not incapacitated from performing his job duties. Dr. Pfeiffer, Mr. Serrano's treating physician, concluded that Mr. Serrano did not have a permanent disability. Thus, Mr. Serrano failed to meet his burden of proof and his application must be denied. Petitioner's determination that he was not permanently disabled or incapacitated from performance of his duties is affirmed.

Cause Exists to Deny the Application

22. Cause exists to deny Mr. Serrano's application for a disability retirement. Mr. Serrano failed to establish by a preponderance of the evidence that he was permanently disabled or incapacitated from performing his usual and customary duties as a campus police officer for San Diego Unified School District based on a psychological (PTSD, acute stress reaction) condition when he filed his application for disability retirement.

ORDER

The application for a disability retirement filed by John A. Serrano with the California Public Employees Retirement System on October 24, 2018, is denied. CalPERS's denial of Mr. Serrano's application is affirmed.

DATE: December 18, 2019.

DocuSigned by:

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MARION VOMHOF

Administrative Law Judge

Office of Administrative Hearings