

**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:**

**TERESA C. CARRANZA, Respondent**

**and**

**CALIFORNIA STATE PRISON, CORCORAN, CALIFORNIA  
DEPARTMENT OF CORRECTIONS AND REHABILITATION**

**Agency Case No. 2019-0217**

**OAH No. 2019040029**

**PROPOSED DECISION**

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 8, 2019, in Fresno, California.

Helen L. Louie, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Teresa C. Carranza (respondent) was present and represented herself.

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
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There was no appearance by or on behalf of the California State Prison, Corcoran, California Department of Corrections and Rehabilitation (CDCR). CalPERS established that CDCR was properly served with the Notice of Hearing. Consequently, this matter proceeded as a default hearing against CDCR under Government Code section 11520.<sup>1</sup>

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 8, 2020.

## **ISSUE**

On the basis of an orthopedic (cervical spine, lumbar spine, bilateral knee, and bilateral wrist) condition, is respondent permanently and substantially incapacitated from the performance of her usual duties as a Psychiatric Technician (PT) for CDCR?

## **FACTUAL FINDINGS**

### **Summary of Dispute**

1. Respondent applied for service pending industrial disability retirement in June 2018, claiming that she became disabled in approximately January of 2016, due to an accident in which she collided with another person and fell down, and due to prior injuries resulting from a January 2010 slip-and-fall incident, both sustained while

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<sup>1</sup> Because CDCR did not appear, all further references to “respondent” herein are to Teresa Carranza.

working as a PT at CDCR. She underwent various treatments and later had cervical spine fusion, knee, shoulder, and carpal tunnel surgeries. She was on and off work at times and continued to experience difficulties with pain. In June 2018 she concluded she was no longer fit to perform the usual duties of a PT and stopped working. In September 2018, John D. Kaufman, M.D., performed an Independent Medical Examination (IME) upon respondent on behalf of CalPERS. Dr. Kaufman concluded respondent was not substantially incapacitated from performing the essential functions and duties of her position.

### **Disability Application and Jurisdiction**

2. On June 21, 2018, respondent submitted a Disability Retirement Election Application (Application) to CalPERS. The Application identified the application type as "Service Pending Industrial Disability Retirement." In the Application, respondent's disability was described as "neck, lower [and] upper back bilateral knees [and] wrists.

Respondent identified the date her disability occurred as January 17, 2016. In response to the question asking how the disability occurred, respondent stated "I fell down."

She described her limitations or preclusions due to her injury or illness as: "sitting for long period of time, walking long distances. Sitting [a] long period of time." Respondent further stated "I experience excruciating pain on [my] lower back, upper back and neck." Respondent indicated that she was working full-time when she filed the Application.

3. On June 23, 2018, respondent retired for service. She has been receiving her retirement allowance since that date. On November 8, 2018, CalPERS notified respondent in writing that her Application had been denied, and informed her of her

right to appeal. Respondent timely appealed from CalPERS' denial. All jurisdictional requirements have been met.

## **Duties of a Psychiatric Technician**

4. As set forth in the California Correctional Health Care Services "Psychiatric Technician Essential Functions List," the PT position involves providing indirect and direct mental health care and basic patient care services, both within the scope of PT practice and as authorized by other medical providers, in a state correctional facility. The PT must work long hours in minimum and maximum security institutions with male and female inmates; administer medications; facilitate group therapy; perform clinical rounds and crisis intervention; perform prevention screening, health-risk behavior screening, and mental health screening; facilitate patient education and engagement; assist with daily living activities; perform disease and infection prevention measures; provide various health testing processes; and obtain and document clinical data regarding inmates' medical, mental health, and behavioral conditions. The PT must communicate well with staff and inmates in person, and accurately prepare and maintain clinical and personnel reports and records.

5. According to the "Physical Requirements of Position/Occupational Title" data completed by respondent's employer, the PT occasionally (i.e., up to three hours) runs, crawls, kneels, climbs, squats, bends the neck or waist, twists the neck or waist, reaches above or below the shoulder, drives, and works with heavy equipment. The PT is occasionally exposed to: excessive noise; extreme temperatures, humidity and wetness; and dust, gas, fumes, or chemicals. The PT occasionally works at heights, operates foot controls, makes repetitive movements, uses special visual or auditory protective equipment, and works with biohazards. The PT occasionally to continuously (i.e., from three to six hours) sits, stands, walks, pushes and pulls, uses fine

manipulation, does simple and power grasping, repetitively uses the hands, walks on uneven ground, and uses a keyboard and mouse. The PT occasionally lifts objects weighing between 51 and 100-plus pounds, and occasionally to frequently lifts objects weighing from zero to 50 pounds.

## **Expert Opinion**

6. CalPERS relied upon John D. Kaufman, M.D., as its expert witness. Dr. Kaufman is board-certified in orthopedic surgery and has been in private practice in Santa Clarita, California, since 1975. He has performed a variety of orthopedic surgeries for many years. He also specializes in treating patients with a broad scope of orthopedic problems involving the shoulders, elbows, knees, hands, fingers, bones, muscles, tendons, joints, and spine. He has performed independent evaluations in both personal injury and medical malpractice cases, and has performed IMEs for CalPERS for approximately five years. Dr. Kaufman examined respondent on September 17, 2018, took a history, reviewed her medical records and job duties, and issued an IME report. Dr. Kaufman also testified regarding his observations and findings.

7. In his IME report, Dr. Kaufman reviewed the history of respondent's problems that led to her filing a disability claim. Respondent, who was 54 at the time, described working for CDCR. In January 2010, while at work, she slipped and fell in mud, landing on her right knee first and then on her gluteal region. She experienced immediate pain in her mid-and-lower back, right knee and neck. She reported the incident and refused medical treatment, but began having increased pain a few days later and requested treatment. She was off work for two to three months, was prescribed anti-inflammatory medication and returned to full-duty PT work.

8. Respondent continued to follow up with medical treatment and underwent X-rays and an MRI of the lumbar spine. She received chiropractic care for her neck and lower back, laser treatment for her neck and decompression therapy. In 2011, she saw a pain management specialist and was provided with a TENS unit<sup>2</sup> and a nerve block injection for her lower back. She also sought acupuncture treatment on her own.

9. In April 2015, respondent underwent a cervical spine fusion at the C3-4, C4-5, and C5-6 levels, performed by Henry Aryan, M.D. Following the surgery, respondent was out of work for a few months before returning to full duty.

10. In January 2016, respondent was walking at work when she collided with someone else, tripped on cement, and fell onto her hands, knees and abdomen. She experienced pain in her bilateral wrists and hands, bilateral shoulders and bilateral knees. Respondent reported the incident but did not seek immediate treatment. Over the next few days, her neck and upper back pain emerged and increased and respondent reported the injury. Respondent was placed off work and treated for her injuries, and MRI studies were ordered. In September 2016, Jerome Dunklin, M.D., performed right shoulder arthroscopic surgery with good results. In August 2017, Dr. Dunklin performed left shoulder arthroscopic surgery with good results. Respondent was provided with physical therapy following both surgeries. In 2017, Dr. Dunklin also performed right knee arthroscopic surgery with good results.

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<sup>2</sup> A TENS (transcutaneous electrical nerve stimulation) unit is a battery-operated device used to treat pain.

11. Respondent reported that from 2010 to the date of her IME, she received approximately 30 platelet-rich plasma (PRP) injections for the lumbar spine, shoulders, right knee and upper back. Some of those injections were provided by a California physician, and others were administered by a physician in Tijuana, Mexico.

12. On June 19, 2018, respondent returned to work on a trial basis and had increasing pain. The next day she experienced increasing pain to her neck and back. Two days later she was treated in a local emergency room for increasing pain, and given a pain injection. She returned to her PT job for one more workday on June 22, 2018, but realized she could not work. She filed for retirement the next day. Respondent continued to receive treatment and, at the time of her IME, was awaiting neck surgery scheduled to take place in October 2018.

13. Respondent's present complaints include pain in the neck, upper back, both shoulders, both wrists, the lower back, and both knees. Respondent did not report any particularized knee problems. She has difficulties with performing daily living activities, including dressing, washing and combing her hair, bending and reaching. She has difficulty climbing stairs, writing, opening doors, lifting objects, opening bottles and jars, entering and exiting a car and driving for over 35 minutes at a time.

14. Dr. Kaufman performed a review of systems and noted respondent had a healing incision on her right hand palmar aspect from recent carpal tunnel surgery. Every other aspect of the review of systems was unremarkable.

15. Dr. Kaufman performed a physical examination and noted a slight spasm in the cervical paraspinous muscles and both trapezius muscles, which he considered normal for a person of respondent's age. Respondent's back showed symptoms of

degenerative disc disease, which is also normal for a person her age. Several range of motion readings were below normal, which Dr. Kaufman considered to be subjective measurements. Otherwise, he noted no objective evidence of decreased mobility. The right and left knee had tenderness, but the physical findings were normal.

Respondent's diminished right-hand grip strength was normal for a person recovering from recent carpal tunnel surgery. Dr. Kaufman testified that respondent's physical condition showed she had recovered normally from her other surgeries. Dr. Kaufman opined that overall, there was no consistency between his objective findings when examining her and her subjective complaints.

16. Dr. Kaufman reviewed medical records related to respondent's care and treatment from approximately June 2016 through September 2018. He considered several MRI results to be potentially revealing because they would provide objective evidence of respondent's condition. He noted that on May 30, 2018, an MRI of the lumbar spine interpreted by Peter Piampiano, M.D., found degenerative disc changes between L3 through L5 with mild desiccation and narrowing, and thinning of disc. Minimal bilateral neural foramina narrowing was further noted. Dr. Kaufman opined that these MRI results evidence only mild degenerative disc disease common in a person of respondent's age. An MRI of the cervical spine performed two weeks earlier, on May 17, 2018, similarly revealed only common degenerative changes. An MRI of the cervical spine performed seven months earlier, on October 10, 2017, showed only degenerative changes as well.

17. Regarding respondent's left shoulder, an MRI performed on December 30, 2016, revealed a small tendon tear and rotator cuff inflammation, and synovitis (inflammation of the synovial joints); Dr. Kaufman opined that these findings are common for a person of respondent's age. Dr. Kaufman reviewed the August 10, 2017

operative report of respondent's left shoulder surgery performed by Dr. Dunklin, and noted that a labral cartilage tear was repaired in a "fairly routine" procedure which appeared successful.

18. After examining respondent, Dr. Kaufman diagnosed her as follows:

- a. Mild cervical musculoligamentous type strain.
- b. Mild thoracic musculoligamentous type strain.
- c. Mild lumbar musculoligamentous type strain.
- d. Status postop carpal tunnel release, right wrist.
- e. No evidence of carpal tunnel syndrome, left wrist.
- f. No evidence of significant pathology, right knee.
- g. No evidence of significant pathology, left knee.
- h. Status postop cervical fusion, levels undetermined.
- i. No objective pathology noted in either shoulder.

19. In conclusion, Dr. Kaufman found respondent to have cooperated with the IME process and put forth her best effort, not exaggerating her complaints. Although respondent had concerns about performing her various job duties without experiencing a generally unendurable level of pain, Dr. Kaufman opined that the objective medical evidence indicated respondent was physically capable of doing the job activities described in the essential functions for the PT position. However, Dr. Kaufman qualified his opinion by taking into account her recent carpal tunnel surgery,

estimating that respondent's current recovery would incapacitate her for approximately four weeks due to pain and weakness when using her right hand.

20. On October 23, 2018, CalPERS requested that Dr. Kaufman provide further clarification of his opinion regarding the right hand recovery time-period. Dr. Kaufman provided a supplemental IME in which he opined that respondent would be unable to lift or carry 50 to 100 pounds "until approximately six months after her carpal tunnel surgery." Dr. Kaufman testified that he is very experienced with performing carpal tunnel surgery, and knows well the subsequent healing process that follows. When he examined respondent during her IME, her incision was healing properly, and she appeared to be recovering as would be ordinary and expected for a post-carpal tunnel surgery patient.

21. On cross-examination, Dr. Kaufman agreed that the subjective pain respondent complained of experiencing may well exist, yet it was not supported by objective evidence of any certain medical conditions. He further opined that pain in her neck region could also potentially cause pain in the hands. However, she appeared to have recovered from both her neck surgeries, which went "very well."

22. For these reasons, and based on his review of the available medical records, Dr. Kaufman found that there were no occupational functions respondent was incapable of performing as a PT, and she has no restrictions linked to her stated symptoms. Thus, respondent was not incapacitated for the performance of her usual duties.

### **Respondent's Evidence**

23. Respondent worked at Corcoran prison since 2000. Before that, she worked for approximately two years as a PT for a private agency. She experienced back

pain "on and off" before her 2000 fall, and she had received treatment for pain beforehand as well. Following her 2000 fall, she took anti-inflammatory and pain medications due to her worsened condition. Respondent experienced neck pain in 2010, and saw Dr. Aryan, who suggested neck surgery. She underwent neck surgery in 2015. She continued working until 2016, when she fell down at work a second time. In 2016, she was "hurting all over" and had to go off work. She had surgeries for her shoulders, hand, and right knee. She regained "some movement" after the surgeries, but still had right shoulder pain and significant pain in her upper and lower back and neck. She also experienced right limb numbness and problems when sitting. Her position required she work overtime on shifts up to 16 hours long, and Corcoran had no PT light duty or work-restricted positions. By 2018, following two more surgeries, she experienced significant pain from her neck down to her fingers, and her right shoulder and elbow were tender and painful.

24. Respondent stated that due to her conditions and ongoing pain, she knows she cannot perform her regular PT duties anymore. She must deliver anywhere from 50 to 130 medications per round to inmates, some of which come in "bubble" packages she would have to break open in order to dispense the medications they contain. She can no longer walk for up to two hours at a time and would feel substantial pain breaking open bubble packages. She also experiences pain when lowering her neck to concentrate on writing. Respondent enjoyed her work as a PT and felt her condition "forced" her to retire from her position. Until recently, she held out hope that she might return to work, but she still has persistent problems with pain when standing, bending, and lifting and lowering her head.

25. Respondent submitted three documents at hearing which were received in evidence as administrative hearsay and considered to the extent permitted by

Government Code section 11513, subdivision (d).<sup>3</sup> William Foxley, M.D., completed a Physician's Report on Disability form, dated January 7, 2020, indicating respondent would be unable to perform "work at or above shoulder level," including "lifting [over] 15 [pounds]." Dr. Foxley checked a box indicating respondent is substantially incapacitated from performance of the usual duties of her position. He described her examination findings as including "constant pain from [the] neck down into [the] shoulders, headaches from neck tension [and] stabbing, burning w[ith] movement."

26. Respondent submitted a Qualified Medical Evaluation (QME) from M. Nathan Oehlschlaeger, D.C., dated October 24, 2019. The QME was for purposes of determining Division of Workers' Compensation benefits eligibility. The QME report listed work preclusions including: no lifting more than 20 pounds, and no lifting more than 10 pounds with either upper extremity; no pushing or pulling more than 30 pounds; no standing more than 15 minutes without sitting or resting briefly; no sitting for over 30 minutes without standing or stretching; no walking for over 30 minutes without resting; no kneeling; no overhead work; and no forceful gripping.

27. Respondent also submitted a Regional Hand Center evaluation report by Randi Galli, M.D., dated April 2, 2018. The report details Dr. Galli's assessment of right hand carpal tunnel syndrome, and a plan for respondent to wear a wrist immobilizing splint nocturnally as "the most effective nonsurgical treatment" for eight weeks before

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<sup>3</sup> Government Code section 11513, subdivision (d), provides in relevant 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 . . . ."

making a further determination. Surgical and non-surgical options were also discussed during the evaluation.

28. Neither of the treating physicians, nor the chiropractor, whose medical documentation was offered as described above, was called to testify in support of their reports and conclusions. No other medical evaluators, practitioners, or care-and-treatment providers testified on respondent's behalf.

## **Discussion**

29. Respondent testified candidly and sincerely about the injuries she has sustained over the course of her career and the resulting pain and discomfort she still experiences. Dr. Kaufman also found respondent to be a credible reporter. However, respondent failed to offer sufficient, competent medical evidence to establish that, at the time she applied for industrial disability retirement, she was substantially and permanently incapacitated from performing the usual duties of a PT. Respondent presented no direct medical evidence or expert testimony to support the Application.

30. The medical evidence CalPERS presented established that respondent's orthopedic condition did not render her incapable of performing her usual PT functions and duties. Dr. Kaufman was thorough, capable, and persuasive in reaching his opinion that respondent was not substantially and permanently incapacitated from performing the usual duties of a PT.

31. The QME medical report that was admitted as administrative hearsay did not support a finding that respondent is substantially and permanently incapacitated from performing the usual duties of a Psychiatric Technician. To the extent the chiropractor who authored the report applied evaluation standards applicable in workers' compensation cases, his opinion can be given little weight in this proceeding.

The standards in disability retirement cases are different from those in workers' compensation. (*Bianchi v. City of San Diego* (1989) 214 Cal.App.3d 563, 567; *Kimbrough v. Police & Fire Retirement System* (1984) 161 Cal.App.3d 1143, 1152-1153; *Summerford v. Board of Retirement* (1977) 72 Cal.App.3d 128, 132 [a workers' compensation ruling is not binding on the issue of eligibility for disability retirement because the focus of the issues and the parties are different].) Thus, the recommended work restrictions in Dr. Oehlschlaeger's October 24, 2019 QME report summarized above were insufficient to support that respondent is substantially and permanently incapacitated from performing the usual duties of a PT.

32. By contrast, Dr. Kaufman employed the standards applicable in these types of disability retirement proceedings. His opinion that respondent's orthopedic condition was not adequately supported by objective medical evidence was persuasive and consistent with the medical records he reviewed.

33. In sum, when all the evidence is considered, respondent failed to establish that, at the time she applied for disability retirement, she was substantially and permanently incapacitated from performing the usual duties of a CDCR Psychiatric Technician. Consequently, her industrial disability retirement application must be denied.

## **LEGAL CONCLUSIONS**

1. By virtue of her employment, respondent is a state safety member of CalPERS, pursuant to Government Code section 21151.

2. To qualify for disability retirement, respondent had to prove that, at the time she applied, she was "incapacitated physically or mentally for the performance of

[her] duties in the state service.” (Gov. Code, § 21156.) As defined in Government Code section 20026:

“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. Evidence Code section 500 provides:

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 he is asserting.

4. Evidence Code section 115 provides in relevant part, that “burden of proof” means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. The party assuming the affirmative at an administrative hearing has the burden of proof, including the initial burden of going forward and the burden of persuasion by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.)

Respondent has not met her burden.

5. The determination of whether respondent is substantially incapacitated must be based on an evaluation of whether, at the time she applied for disability retirement, she was able to perform the usual duties of a PT, and not just the usual duties of her most recent position. (*California Department of Justice v. Board of Administration of California Public Employees’ Retirement System (Resendez)* (2015) 242 Cal.App.4th 133, 139.)

6. In *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876, the court interpreted the term "incapacity for performance of duty" as used in Government Code section 20026 (formerly section 21022) to mean "the *substantial* inability of the applicant to perform his usual duties." (Italics in original.)

7. The court in *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 855 (*Hosford*), reached a similar conclusion with respect to a state traffic sergeant employed by the CHP. In *Hosford*, the sergeant argued that his condition increased his chances for further injury. The court rejected this argument, explaining that "this assertion does little more than demonstrate that his claimed disability is only prospective (and speculative), not presently existing." (*Hosford, supra*, 77 Cal.App.3d at p. 863.) As the court explained, prophylactic restrictions that are imposed to prevent the risk of future injury or harm are not sufficient to support a finding of disability; a disability must be currently existing and not prospective in nature. (*Ibid.*)

8. When all the evidence in this matter is considered in light of the courts' holdings in *Resendez, Mansperger, and Hosford*, respondent did not establish that her disability retirement application should be granted. Despite her credibly-stated claims, there was insufficient objective evidence based upon competent medical opinion that she is permanently and substantially incapacitated from performing the usual duties of a Psychiatric Technician due to an orthopedic condition. Consequently, her disability retirement application must be denied.

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## ORDER

The application of respondent Teresa C. Carranza for Service Pending Industrial Disability Retirement is DENIED.

DATE: January 28, 2020

DocuSigned by:  
*John DeCure*  
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JOHN E. DeCURE

Administrative Law Judge

Office of Administrative Hearings