

ATTACHMENT A

THE PROPOSED DECISION

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

In the Matter of the Application for Industrial Disability

Retirement of:

SAKARIA F. TAGALOA, and

**SAN QUENTIN STATE PRISON, CALIFORNIA DEPARTMENT
OF CORRECTIONS AND REHABILITATION,**

Respondents.

Case No. 2019-0327

OAH No. 2019080792

PROPOSED DECISION

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on January 30, 2020, in Oakland, California.

Staff Attorney Helen Louie represented complainant California Public Employees' Retirement System.

Peter O. Slater, Attorney at Law, represented respondent Sakaria F. Tagaloa, who was present.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM

FILED February 18 20 20



There was no appearance on behalf of respondent San Quentin State Prison, California Department of Corrections and Rehabilitation.

The record closed and the matter was submitted on January 30, 2020.

ISSUE AND SUMMARY

Whether respondent Tagaloa was physically or mentally incapacitated to perform his usual and customary duties as a correctional officer on June 25, 2016, when he separated from his employment, and on June 21, 2018, when he filed an application for industrial disability retirement, on the basis of an internal heart condition?

Respondent Tagaloa contends that his heart condition requires him to take an anti-coagulant medication, which would make it more difficult to stop bleeding if stabbed or otherwise injured by an inmate, and thus he was substantially incapacitated from performing his usual and customary duties as a correctional officer. Respondent submitted no evidence in the hearing and the evidence submitted by CalPERS does not establish his claim.

FACTUAL FINDINGS

1. On August 12, 2019, Keith Riddle, Chief of the Disability and Survivor Benefit Services Division of the California Public Employees' Retirement System (CalPERS), filed the statement of issues in his official capacity on behalf of complainant CalPERS.

2. Respondent Sakaria F. Tagaloa was employed by respondent San Quentin State Prison, California Department of Corrections and Rehabilitation (CDCR) as a correctional officer. By virtue of that employment, respondent Tagaloa was a state safety member of CalPERS, subject to Government Code section 21151.¹

3. On March 4, 2016, respondent Tagaloa submitted an application for service retirement. Respondent Tagaloa was retired for service effective June 25, 2016, and has been receiving his retirement allowance from that date.

4. On June 21, 2018, respondent Tagaloa submitted an application for industrial disability retirement on the basis of an internal heart condition.

5. On December 1, 2018, CalPERS sent respondent Tagaloa a letter denying his application for industrial disability retirement. Respondent Tagaloa timely appealed and this proceeding followed.

Respondent Tagaloa's Background and Job Duties

6. Respondent Tagaloa is 65 or 66 years old. He worked for CDCR for a total of 30 years.

7. The essential functions and job duties of respondent Tagaloa's position as a correctional officer for CDCR included exposure to inmate assault; the ability to defend himself and others against inmates armed with weapons; and the ability to wear protective clothing, including "stab proof vests."

¹ All statutory references are to the Government Code unless otherwise stated.

Respondent Tagaloa's Heart Condition

8. Respondent Tagaloa suffered from diabetes, hypertension, elevated cholesterol, obesity, and sleep apnea for many years prior to his retirement.

9. Respondent Tagaloa was diagnosed with atrial fibrillation and was prescribed Coumadin (warfarin), an anticoagulant medication, which he took for years before his retirement.

10. On February 11, 2017, more than seven months after he retired from state service, respondent Tagaloa woke up to chest pain. He sought treatment. An angiogram revealed multi-vessel disease and a high grade obstruction in his main left coronary artery, which was considered potentially lethal.

11. On February 27, 2017, respondent Tagaloa underwent a three-vessel coronary bypass surgery. Although he suffered Dressler's syndrome (inflammation of the sac surrounding the heart) post-operatively, it resolved and the surgery was a success.

12. Respondent continues to take Coumadin.

13. Respondent Tagaloa did not submit any evidence in this proceeding.

Expert Testimony of Dr. Leonard

14. Thomas E. Leonard, M.D., testified at hearing. CalPERS also submitted reports authored by Dr. Leonard dated November 15, 2018, and July 30, 2019. Dr. Leonard has been a licensed physician in California since 1967. He is board-certified in internal medicine and board-qualified in cardiology and pulmonary disease. He specializes in heart and lung disease.

15. On November 15, 2018, Dr. Leonard evaluated respondent Tagaloo's capacity to perform his usual and customary duties. Dr. Leonard interviewed respondent Tagaloo and conducted a physical examination of him. Dr. Leonard also reviewed respondent Tagaloo's job description and many of his medical records.

16. Dr. Leonard found respondent Tagaloo to be an excellent historian. Respondent Tagaloo had lost approximately 100 pounds from his highest weight and reported that he felt well. He reported that he was experiencing no cardiac symptoms and medication to control his cardiac rhythms had been successfully reduced. He reported that he walks at least one hour each day with no cardiac symptoms.

17. Dr. Leonard concluded that respondent Tagaloo is not substantially incapacitated for the performance of his duties as a correctional officer. Dr. Leonard explained that "there is no question that he had underlying and obstructive coronary disease during the time that he was working as a Correctional Officer and that progressed to a threshold in February 2017." Dr. Leonard observes that respondent Tagaloo was able to perform his duties with that condition for years until his service retirement. Dr. Leonard opines that although respondent was temporarily incapacitated for a period following the February 2017 surgery, his overall condition, including his coronary circulation, was better following full recovery from the bypass surgery, than it was before his service retirement. Dr. Leonard opines that respondent Tagaloo's cardiac conditions do not prevent him from performing any of his duties as a correctional officer.

18. Dr. Leonard was asked to review multiple reports of Raye L. Bellinger, M.D. Those reports were not submitted into evidence. However, according to Dr. Leonard, Dr. Bellinger opined that respondent Tagaloo's need to take anticoagulant medication precluded him from returning to his job as a correctional officer. Dr.

Leonard disagrees. Dr. Leonard is unaware of any CDCR restrictions regarding correctional officers taking anti-coagulant medication. Dr. Leonard conceded that such medications make it more difficult to stop bleeding and would result in respondent Tagaloa bleeding more if stabbed by an inmate. However, Dr. Leonard reports that the treatment for such injuries would be the same. Dr. Leonard opined that because respondent Tagaloa worked for four years as a correctional officer while on anti-coagulant medication, such medication does not preclude him from performing his duties. Dr. Leonard also testified that anti-coagulant medications have evolved since 2012 and the newer medications cause less of a problem with uncontrolled bleeding. Dr. Leonard further reported that he is aware that many law enforcement officers and firefighters continue to work while on anti-coagulant medications. He reports that some law enforcement agencies prohibit such a practice and others do not. He views that as an administrative decision, not a medical decision.

Ultimate Factual Findings

19. The opinions of Dr. Leonard were unrebutted and persuasive. Respondent Tagaloa contends that his anti-coagulant medication renders him unable to perform his duties due to an elevated risk of bleeding if injured on duty. However, he presented no evidence to support that claim and Dr. Leonard disagrees. Respondent Tagaloa did not establish that he was substantially incapacitated for the performance of his duties as a correctional officer on June 25, 2016, when he separated from employment, or on June 21, 2018, when he filed his application for industrial disability retirement.

LEGAL CONCLUSIONS

1. The burden of proving an incapacitating condition is on the applicant for a disability retirement, and the standard of proof is a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051; Evid. Code, § 115.).

2. A CalPERS state safety member may retire for industrial disability if he becomes "incapacitated for the performance of duty" as the result of an industrial disability. (§ 21151.) The term "incapacitated for the performance of duty" is defined as "disability of permanent or extended and uncertain duration . . . on the basis of competent medical opinion." (§ 20026.) An applicant is "incapacitated for performance of duty" if he is substantially unable to perform the usual duties of his position. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876; accord *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 859-860.)

3. Respondent Tagaloa did not establish that he was substantially incapacitated for the performance of his duties as a correctional officer on June 25, 2016, when he separated from employment or on June 21, 2018, when he filed his application for industrial disability retirement. (Factual Finding 19.)

ORDER

The application of Sakaria F. Tagaloa for industrial disability retirement is denied.

DATE: February 14, 2020

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Michael C. Starkey
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MICHAEL C. STARKEY
Administrative Law Judge
Office of Administrative Hearings