

ATTACHMENT A

THE PROPOSED DECISION

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

In the Matter of the Reinstatement from Industrial Disability

Retirement of:

**SCOTT A. MAYNARD and DEUEL VOCATIONAL INSTITUTION,
CALIFORNIA DEPARTMENT OF CORRECTIONS AND
REHABILITATION, Respondents.**

Case No. 2018-0928

OAH No. 2018100685

PROPOSED DECISION

Marcie Larson, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on August 6, 7, and October 22, 2019, and January 21, 2020, in Sacramento, California.

Rory Coffey, Senior Attorney, appeared on behalf of the California Public Employees' Retirement System (CalPERS).

PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED

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Respondent Scott A. Maynard appeared at the hearing and represented himself on August 6 and 7, and October 22, 2019. Danny Polhamus, Attorney at Law represented respondent on January 21, 2020.¹

There was no appearance by or on behalf Deuel Vocational Institution (Deuel), California Department of Corrections and Rehabilitation (Department). The Department was duly served with a Notice of Hearing. The matter proceeded as a default against the Department pursuant to California Government Code section 11520, subdivision (a).

Evidence was received, the record was closed, and the matter was submitted for decision on January 21, 2020.

BACKGROUND AND ISSUE

Respondent was employed as a Correctional Officer (CO) for the Department at Deuel. On August 7, 2014, respondent applied for industrial disability retirement, on the basis of right knee condition (orthopedic condition). Respondent's application was approved and he retired for disability effective on November 5, 2014. Because respondent was under the minimum age for voluntary service retirement, pursuant to Government Code section 21192, on November 29, 2017, CalPERS sent respondent to an Independent Medical Evaluation (IME). CalPERS reviewed medical reports

¹ Respondent did not retain Mr. Polhamus until on or about October 17, 2019. On October 22, 2019, the hearing was continued to allow Mr. Polhamus to appear at the January 21, 2020 hearing.

concerning respondent's orthopedic condition and determined that respondent was no longer substantially incapacitated from performing the duties of a CO with the Department. Respondent appealed from CalPERS' determination.

The issue for Board determination is whether CalPERS established that respondent is no longer substantially incapacitated from performing the usual duties of a CO on the basis of his orthopedic condition.

FACTUAL FINDINGS

Procedural History

1. On August 7, 2014, respondent submitted an application for industrial disability retirement (application) with CalPERS. At the time, respondent was employed as a CO by the Department, at Deuel. By virtue of his employment, respondent is a state safety member of CalPERS.

2. In filing the application, respondent claimed that his specific disability was "right knee." Respondent wrote that he injured his right knee "jumping down from the back of a truck [he] was searching." Respondent also wrote that he was not able to kneel, squat or run. He was only able to climb "a couple" of stairs at a time. He also explained that his orthopedic condition affected his "safety" and ability to protect his "fellow officers" because he was not able to run to alarms.

3. On November 5, 2014, CalPERS notified respondent that his application for industrial disability retirement was approved. The letter stated that respondent was found to be substantially incapacitated from the performance of his usual duties as a CO for the Department, based upon his orthopedic condition. Respondent was

informed that he may be reexamined periodically to determine his qualification for reinstatement if he was under the minimum age for service retirement. Respondent was 43 years old at the time of his retirement. He was under the minimum age for service retirement.

4. On October 6, 2017, CalPERS notified respondent that it would conduct a reexamination of his disability retirement. Part of the reexamination included an IME performed by Harry Khasigian, M.D., on November 29, 2017.

5. On January 5, 2018, CalPERS notified respondent that based upon a review of medical evidence, including a report prepared by Dr. Khasigian, CalPERS determined that respondent was no longer substantially incapacitated from performing the job duties of a CO for the Department. Respondent was informed that he would be reinstated to his former position. Respondent was advised of his appeal rights. Respondent filed an appeal and request for hearing by letter dated January 28, 2018.

6. On or about October 9, 2018, Anthony Suine, Chief, Benefit Services Division, Board of Administration, CalPERS, signed and thereafter filed the Accusation. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Respondent's Employment and Work Injury

7. In March 2005, respondent was hired as a CO for the Department. In 2006, he began working at Deuel. On July 20, 2013, respondent was working at a vehicle sally port. He was inspecting a culinary truck. After he completed his search, he walked to the back of the truck's ramp and waited for the driver to lower the ramp.

The ramp began to lower but the driver stopped the ramp, causing the ramp to jolt. Respondent lost his balance and jumped off the ramp. Respondent explained that he landed "awkwardly" on the ground with most of his weight placed on his right leg, which was straight when he landed. Respondent collapsed to the ground and immediately felt pain radiating from his right knee down his leg.

Respondent continued to work the day of the incident. He sat at a desk and completed paperwork. When he tried to get up from his chair, he could not use his right leg. His knee would not bend and he was in extreme pain. Respondent had to slide his right foot across the ground to walk to his vehicle. He drove his vehicle to the front gate at Deuel and reported his injury to the patrol sergeant. Respondent was sent an emergency room in Tracy, California. X-rays taken of respondent's right leg showed he had no broken bones. Respondent was given pain medication and directed to obtain an MRI of his knee. Shortly thereafter, respondent had an MRI performed which suggested a possible meniscus tear.

8. On November 4, 2013, Gordon Lewis, M.D. performed arthroscopic surgery on respondent's right knee. He did not find a meniscus tear. However, he found chondromalacia, which is damage to the knee cartilage, in at least two areas of respondent's knee, which could not be repaired. Respondent has not undergone any further surgeries. He has not worked since the date of his accident.

Duties of a Correctional Officer

9. As set forth in the Essential Functions statement, a CO must be able to perform the following relevant functions:

- Must be able to perform the duties of all the various posts

- Must be able to work overtime. Overtime is mandatory and could be 8 hours at one time and on very rare occasions up to 16 hours in situations such as a riot
- Must be able to wear personal protective clothing and breathing apparatus to prevent blood/air borne pathogens
- Disarm, subdue and apply restrains to an inmate
- Defend self against an inmate armed with a weapon
- Walk occasionally to continuously
- Run occasionally, run in an all-out effort while responding to alarms or serious incidents, distances vary from a few yards up to 400 yards, running may take place over varying surfaces including uneven grass, dirt areas, pavement, cement, etc., running can include stairs, or several flights of stairs maneuvering up or down
- Climb occasionally to frequently, ascent/descent or climb a series of steps/stairs, several tiers of stairs or ladders as well as climb onto bunks/beds while involved in cell searches, must be able to carry items while climbing stairs

- Crawl and crouch occasionally, crawl or crouch under an inmate's bed or restroom facility while involved in cell searches, crouch while firing a weapon or while involved in property search
- Stand occasionally to continuously, stand continuously depending on the assignment
- Sit occasionally to continuously, sit while performing record keeping or report writing activities, observing designated areas and driving activities
- Stoop and bend occasionally to frequently, stoop and bend while inspecting cells, physically searching inmates from head to toe and while performing janitorial work including mopping and cleaning
- Lift and carry continuously to frequently lift and carry in the light (20 pound maximum) to medium (50 pound maximum) range frequently throughout the workday and in the very heavy lifting range (over 100 pounds) occasionally lift and carry an inmate and physically restrain the inmate including wrestling an inmate to the floor drag/carry an inmate out of a cell, perform lifting/carrying activities while working in very cramped spaces.

- Perform regular duties on a wide range [of] working surfaces, which may become slippery due to weather or spillage of liquids and grease

10. On June 13, 2014, a Return-to-Work Coordinator for the Department, signed a "Physical Requirements of Position/Occupational Title" form (Physical Requirements form), and submitted it to CalPERS. According to the Physical Requirements form, when working as a CO, respondent: (1) constantly (over 6 hours) sat, stood, walked, bent his neck, twisted his neck and waist, engaged in fine manipulation, power and simple grasped, repetitively used his hands, carried up to 25 pounds, drove and was exposed to extreme temperature, humidity, and wetness and worked at heights; (2) frequently (three to six hours a day) climbed, bent at his waist, reached below the shoulders, pushed and pulled, lifted from 25 to 50 pounds, walked on uneven ground, and was exposed to dust, gas, fumes, or chemicals; (3) occasionally (up to three hours), ran, crawled, kneeled, squatted, reached above his shoulders, used a keyboard and mouse, lifted between 51 and over 100 pounds, was exposed to excessive noise, operated foot controls or repetitive movement, used special visual or auditory protective equipment, and worked with biohazards; and (4) never worked with heavy equipment.

Independent Medical Evaluation by Harry Khasigian, M.D.

11. On November 29, 2017, at the request of CalPERS, Harry Khasigian, M.D., conducted an IME of respondent. Dr. Khasigian prepared an initial report and a supplemental report. He testified at the hearing consistent his reports. Dr. Khasigian is a board-certified orthopedic surgeon. He obtained his medical degree from the University of Southern California in 1974. Between 1975 and 1979, he completed an orthopedic residency at the University of California, Irvine Medical Center. Dr.

Khasigian has practiced orthopedic medicine for approximately 39 years. He is a Diplomate of the American Board of Orthopedic Surgery and a fellow of the American Academy of Orthopedic Surgeons. He holds a sub-specialty certification in sports medicine. He operates a private practice, treating patients and performing surgeries related to orthopedic conditions, including knee conditions. Approximately 80 percent of his practice is treating patients and 20 percent is performing medical-legal evaluations, including IMEs for CalPERS.

12. As part of the IME, respondent completed a questionnaire, which Dr. Khasigian reviewed. Dr. Khasigian then interviewed respondent, obtained a medical history, and conducted a physical examination. He also reviewed the Physical Requirements form and essential functions for respondent's position. Dr. Khasigian reviewed respondent's medical records related to his orthopedic condition, including photographs from the November 4, 2013 arthroscopic surgery, performed by Gordon Lewis, M.D., at Kaiser hospital.

RESPONDENT'S COMPLAINTS AND HISTORY OF INJURY

13. Dr. Khasigian obtained a history of respondent's employment, orthopedic condition, treatment, and complaints. Respondent explained that on July 20, 2013, he suffered an injury to his right knee, when he jumped off a lift on the back of a truck at work. He landed with his leg straight and felt pain. Respondent underwent arthroscopic surgery on November 4, 2013 for a suspected meniscus tear. The surgery revealed chondromalacia, but no meniscus tear. No additional treatment was recommended.

14. Respondent explained that his right knee "bothers him all the time." Activities such as "[s]tanding or just putting pressure on his knee, bending and

extending it will cause pain." Respondent explained that if he "moves from steps in his house, his leg will give out." He also occasionally has "popping" and falls down due to his knee "giving out." Respondent explained that his pain level depends on his activity level. He "always has a level 3 pain." If he walks or increases his activity his pain goes to a level 10, which causes hip pain as well. He also explained that his knee has gotten worse over time, but that he has to wait for a total knee replacement because he is too young to have the surgery.

15. Respondent had not received any treatment for his orthopedic condition from Kaiser, where the arthroscopic surgery was performed; since 2013. He did not have any treatment from Roland Winter, M.D., at Alpine Orthopedic Group, his orthopedic doctor, since 2014. Respondent reported that he used two stabilizing braces intermittently for his right knee. His wife is a massage therapist and provides him with massage. He also takes Motrin and Tylenol for pain.

16. Respondent reported that he had not worked in any capacity since his accident on July 20, 2013. Respondent explained that he could not return to work because of his work restrictions which included, "no running, no kneeling and no squatting."

PHYSICAL EXAMINATION AND REVIEW OF MEDICAL RECORDS

17. Dr. Khasigian conducted a physical examination of respondent, including a review of systems. Dr. Khasigian noted that respondent could "sit, stand and lie without assistance." He observed respondent walk and observed that respondent had "an affected limp on the right." Dr. Khasigian opined that the limp "appears to be voluntary as opposed to antalgic." Respondent also performed the heel and toe walk "in the same manner with an affected limp." Dr. Khasigian did not observe any swelling

or atrophy of the right leg. He also did not observe any "crepitus" which Dr. Khasigian described as a "grinding sound" coming from the knee. Respondent's knee was not tender and the strength of the ligaments was normal. Respondent had no pain along the medial or lateral joint line of the patellofemoral facets. Dr. Khasigian opined that the patella was normal, which is important, because a condition involving the patella can be painful when using stairs, climbing, squatting, and kneeling. Dr. Khasigian opined that respondent's orthopedic examination was normal and that his complaints of "global" pain indicates "pain behavior" as opposed to pain from an injury.

18. Dr. Khasigian reviewed the MRI performed on respondent's knee on August 30, 2013. He described the findings as "completely normal and no evidence of trauma to his knee." He also reviewed the November 4, 2013 operative report for the arthroscopic surgery performed on respondent's right knee and the arthroscopic photographs. Dr. Khasigian explained that the operative report noted a "grade 2 chondromalacia" of the retropatellar surface, which is the back of the kneecap. Chondromalacia is the thinning or wearing of the cartilage surface. There are four grades 1 through 4, with 4 being little or no cartilage remaining.

Dr. Khasigian also noted that the operative report listed that the "[l]ateral tibial plateau showed a lamination of the weightbearing [sic] area and one area showing fibrillation," which Dr. Lewis described as "Grade II chondromalacia." The lateral tibial plateau is outside of the lower portion of the knee in the back of the knee, on the tibia. Dr. Khasigian described lamination as the complete lifting off of the cartilage. Dr. Khasigian opined that the photographs did not depict grade 3 chondromalacia. Rather Dr. Khasigian observed that the photographs depicted one "elevation in the lateral tibial plateau" which Dr. Khasigian described as "wear and tear."

DIAGNOSIS AND OPINIONS

19. Dr. Khasigian diagnosed respondent with "Grade 1 chondromalacia right tibial plateau." He opined that Dr. Lewis "overstated" the "small chondral lesion" as a "grade 3." He opined that respondent's "entire knee appears to have intact cartilage," not grade 3, "which is usually multiple fissures, fractures of the cartilage, and multiple irregularities, not a single line as depicted in [the] photographs" taken during the arthroscopic surgery. He further opined that the photographs "show actually close to pristine cartilage in the majority of his knee joint." Dr. Khasigian also noted that the photos depict "simply two small areas, which may have a grade 1, or perhaps, a grade 2 change, but nothing that would be considered disabling or dysfunctional or out of context for his age, weight and activity level." He also opined that the "presence or absence of chondromalacia does not necessarily translate to disability or impairment."

20. Dr. Khasigian opined that respondent is able to perform all of his duties as a CO. He is not precluded from "standing, walking, squatting, kneeling and climbing," nor "running." Dr. Khasigian also opined that respondent is not substantially incapacitated from performing his duties as a CO.

SUPPLEMENTAL REPORT

21. On August 2, 2018, Dr. Khasigian issued a supplement report after he was provided a January 18, 2018 MRI report, reports and medical records from Dr. Winter, and a disability report from Jerome Robson, M.D. The MRI report listed "Grade 2-3 chondromalacia along the posterior aspect of the lateral tibial plateau." Dr. Khasigian described the MRI findings as depicting "minor chondromalacia in the posterior aspect of the lateral tibial plateau, but the greatest majority (90 percent) of his knee is within normal limits in regard to the cartilage surfaces."

22. Dr. Khasigian testified that the additional records did not change his opinion that respondent is not substantially incapacitated from the performance of his duties as a CO.

Respondent's Evidence

DR. WINTER'S TESTIMONY

23. Dr. Winter is a board-certified orthopedic surgeon, licensed to practice since 1988. He holds an additional certification in sports medicine. Approximately 70 percent of Dr. Winter's practice is treating patients. The other 30 percent is spent performing medical-legal evaluations. Dr. Winter has not performed any evaluations for CalPERS but is familiar with and understands the CalPERS standard for determining whether an individual is substantially incapacitated from the performance of their duties.

24. Dr. Winter has been respondent's treating orthopedic doctor since 2014. He has treated respondent for his right knee. In preparation for hearing, Dr. Winter's reviewed Dr. Khasigian's reports, respondent's worker's compensation records, a Functional Capacity Evaluation performed on January 21, 2019, and the Physical Requirements and essential functions of respondent's position as a CO.

25. Dr. Winter disagrees with Dr. Khasigian's opinion that respondent is not substantially incapacitated from the performance of his duties as a CO. He opined that respondent's medical records and the operative report prepared by Dr. Lewis concerning the arthroscopic surgery performed on November 4, 2013, demonstrate that respondent has three areas of cartilage damage, including two area of grade 3 chondromalacia in part of the joint in the knee cap. Dr. Winter explained that Dr. Khasigian ignored the more probable grade 3 chondromalacia of lateral tibial plateau.

26. Dr. Winter explained that grade 3 chondromalacia is the second most severe state of chondromalacia, which means that there is deep fissuring and bone poking through the cartilage. Additionally, an MRI completed on January 18, 2018, confirmed a diagnosis of "focal grade 3 chondromalacia lateral tibial plateau posterior aspect" and noted that respondent has a cyst or a "notch of inflammation" with fluid collection that is encapsulated around the Anterior Cruciate Ligament (ACL). The cyst or notch of inflammation can be caused by chondromalacia. Dr. Winter further explained that respondent's right knee pain and swelling are common symptoms of chondromalacia. Additionally, respondent's report of his right knee "giving out" is consistent with a pain response to his condition.

27. Dr. Winter opined that the November 4, 2013 operative report, and not the photographs taken during the arthroscopic surgery, is the best evidence of what was observed by Dr. Lewis during the surgery. Dr. Winter explained the photographs often do not capture what the doctor is seeing, which is why the detailed findings and diagnosis are included in the operative report.

28. Dr. Winter explained that the nature of respondent's orthopedic condition is that it progresses and does not improve. Dr. Winter treated respondent with cortisone injections as recently as April 2018, which provided him some temporary relief. Respondent is not yet a candidate for knee replacement surgery because he is too young.

29. Dr. Winter opined that based on respondent's orthopedic condition, he is restricted from performing the duties of a CO. Specifically, respondent cannot lift or carry more than 20 pounds. He cannot stand or walk for more than four hours. He is also precluded from running, kneeling, squatting, crouching, crawling, or performing "take downs" of inmates. Respondent can climb no more than a few stairs at a time,

but cannot climb on a daily basis. Dr. Winter explained that his restrictions are not prophylactic. Rather, respondent is not physically capable of performing the tasks due to his orthopedic condition.

RESPONDENT'S TESTIMONY

30. Respondent is 48 years old. He has not worked in any capacity since his accident in 2013. Respondent explained that his orthopedic condition has continued to worsen since his accident. He has walked with a limp since the day of the accident. Despite efforts to rehabilitate his knee through weight loss, exercise, acupuncture, massage and injections, he continues to suffer from pain, swelling and weakness. When respondent engaged in any type of physical activity, his right knee radiates pain and swells. The pain and swelling effects his entire leg, which makes it impossible for him to left his foot off the ground.

31. Respondent contends that he cannot perform the duties of a CO as he cannot climb stairs because his right leg "gives out." He cannot stand or walk for long periods. He cannot bend and lift more than 35 pounds. Respondent could not run for alarm or help in an inmate take-down situation. Nor would he be able to protect himself or the other officers. Respondent has no plans to return to work in any capacity.

Discussion

32. CalPERS failed to establish that respondent is no longer substantially incapacitated from performing the usual duties of a CO for the Department. Respondent's application was approved November 5, 2014, after he underwent arthroscopic surgery on right knee, which demonstrated he had grade 3 chondromalacia in his right knee. Respondent's condition has not improved. He walks

with a limp, suffers from pain, swelling and weakness with activity. Dr. Winter, respondent's treating orthopedic physician since 2014, persuasively testified that chondromalacia is not a condition that will improve over time. His opinion is supported by the evidence. Dr. Winter identified objective findings on the physical examinations, the November 4, 2013 operative report and most recent MRI taken on January 18, 2018, to support his opinion that respondent suffers from an orthopedic condition, which precludes him from performing the duties of a CO.

33. In contrast, Dr. Khasigian's opinion that respondent is no longer substantially incapacitated from performing the usual duties of a CO was not persuasive or supported by the evidence. Dr. Khasigian opined that based on his review of eight photographs of taken during the arthroscopic surgery, Dr. Lewis "overstated" the degree of respondent's chondromalacia. Dr. Khasigian disregarded the operative report and the most recent MRI, which confirmed a diagnosis of grade 3 chondromalacia of the lateral tibial plateau posterior aspect. Additionally, Dr. Khasigian's opinion that respondent's orthopedic condition should not prevent him from performing any duties of a CO, does not take into consideration the objective evidence that respondent continues to suffer from a limp, swelling, and weakness in his right knee with activity.

34. When all the evidence is considered, CalPERS failed to submit sufficient evidence to meet its burden. As a result, CalPERS' request that respondent be involuntarily reinstated from industrial disability retirement is denied.

LEGAL CONCLUSIONS

Standard of Proof

1. CalPERS has the burden of proving by a preponderance of the evidence that respondent is no longer substantially incapacitated for the performance of his usual job duties as a CO with the Department and should be reinstated to his former position. (*In the Matter of the Application for Reinstatement from Industrial Disability Retirement of Willie Starnes* (January 22, 2000, Precedential Decision 99-03).) Evidence that is deemed to preponderate must amount to "substantial evidence." (*Weiser v. Board of Retirement* (1984) 152 Cal.App.3d 775, 783.) To be "substantial," evidence must be reasonable in nature, credible, and of solid value. (*In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.)

Applicable Law

2. Respondent is a safety member of CalPERS by virtue of his former employment as a CO for the Department. He was granted disability retirement based on his orthopedic conditions pursuant to Government Code section 21151, subdivision (a), which provides the following:

Any 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.

3. In accordance with Government Code section 21192, CalPERS reevaluates members receiving disability retirement benefits who are under the minimum age for service retirement. That section, in relevant part, provides:

The board . . . may require any recipient of a disability retirement allowance under the minimum age for voluntary retirement for service applicable to members of his or her class to undergo medical examination. . . . The examination shall be made by a physician or surgeon, appointed by the board. . . . Upon the basis of the examination, the board or the governing body shall determine whether he or she is still incapacitated, physically or mentally, for duty in the state agency . . . where he or she was employed and in the position held by him or her when retired for disability, or in a position in the same classification, and for the duties of the position with regard to which he or she has applied for reinstatement from retirement.

4. Government Code section 21193 governs the reinstatement of a recipient of disability retirement who is determined to no longer be substantially incapacitated for duty and, in relevant part, provides:

If the determination pursuant to Section 21192 is that the recipient is not so incapacitated for duty in the position held when retired for disability or in a position in the same classification or in the position with regard to which he or she has applied for reinstatement and his or her employer offers to reinstate that employee, his or her disability

retirement allowance shall be canceled immediately, and he or she shall become a member of this system.

5. Government Code section 20026 defines "disability" and "incapacity for performance of duty," as follows:

"Disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion.

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.) In *Hosford v. Board of Administration of the Public Employees' Retirement System* (1978) 77 Cal.App.3d 854, 862, the court held that a disability or incapacity must currently exist and that a mere fear of possible future injury which might then cause disability or incapacity was insufficient.

7. The standards in CalPERS' disability retirement cases are different from those in workers' compensation cases. (*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, any determination of disability that may have been made in respondent's workers' compensation case cannot be given any weight in this proceeding.

8. To involuntarily reinstate respondent from industrial disability retirement, CalPERS has to establish that respondent is no longer substantially incapacitated from performing the usual duties of a CO for the Department. As set forth in Findings 7 through 34, CalPERS did not offer sufficient competent medical evidence to meet its burden of proof. Consequently, when all of the evidence is considered, CalPERS' request that respondent be involuntarily reinstated from disability retirement must be denied.

ORDER

The appeal of respondent Scott Maynard is GRANTED. The request of California Public Employees' Retirement System to involuntarily reinstate respondent Scott Maynard from industrial disability retirement is DENIED.

DATE: February 18, 2020

DocuSigned by:
Marcie Larson
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MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings