

**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**

**BROOKE R. MOORE and SALINAS VALLEY STATE PRISON,  
CALIFORNIA DEPARTMENT OF CORRECTIONS AND  
REHABILITATION, Respondents**

**Agency Case No. 2019-1183**

**OAH Case No. 2020040490**

**PROPOSED DECISION**

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on September 28, 2020, from Sacramento, California.

Dustin Ingraham, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Respondent Brooke R. Moore (Moore) represented herself and testified at hearing.

Leslie Silveira (Silveira), Personnel Officer, Salinas Valley State Prison (SVSP), California Department of Corrections and Rehabilitation (CDCR) represented SVSP and CDCR, and testified at hearing.

Evidence was received, the record closed, and the matter submitted for decision on September 28, 2020.

## **ISSUE**

Was Moore permanently disabled or substantially incapacitated from the performance of her usual and customary duties as a CDCR Correctional Officer (CO) on the basis of a psychological condition from October 30, 2013, the date she discontinued state service, through May 14, 2019, the date she filed her application for Industrial Disability Retirement (IDR)?

## **FACTUAL FINDINGS**

### **Moore's Work History and Injury at SVSP**

1. Moore was employed by CDCR as a CO. She first entered the CDCR Academy on February 26, 2007. Upon graduation, she started work at SVSP on August 18, 2007. By virtue of her employment, Moore was a state safety member of CalPERS.

2. On May 2, 2011, Moore sustained an injury to her left ankle while responding to a prison alarm. She was taken off work and subsequently underwent ankle surgery, which did not relieve her pain and other physical symptoms. Following her injury, Moore also developed depression and anxiety, with symptoms including

periods of inconsolable crying, shaking, panic attacks, poor sleep, inability to get out of bed, shortness of breath, reduced appetite, and a 40-pound weight loss.

3. Moore never returned to work as a CO. She received her last paycheck from CDCR, and discontinued state service, on October 30, 2013. However, she continued to receive Nonindustrial Disability Insurance (NDI) benefits until March 31, 2014. On April 1, 2014, she was placed on an unpaid leave of absence until she resigned and formally separated from state employment on June 6, 2018.

### **Moore's Orthopedic Condition**

4. On May 11, 2015, Moore filed an application for IDR based on her orthopedic (left ankle) condition (2015 Application). CalPERS denied the 2015 Application on March 4, 2016, finding that Moore was not substantially incapacitated from the performance of her usual and customary job duties as a CO on the basis of her orthopedic condition. Moore timely appealed.

5. On April 19, 2017, the CalPERS Board affirmed denial of the 2015 Application. Moore did not seek further review of the Board's decision, which became final.

### **Moore's Psychological Condition**

#### **MOORE'S TREATMENT FOR HER PSYCHOLOGICAL CONDITION**

6. After her May 2011 injury, Moore encountered significant difficulties getting treatment for her psychological condition through the worker's compensation

system. She was initially seen in 2012 by psychiatrist Dale Buche, MD,<sup>1</sup> who prescribed her psychotropic medication. However, she had to discontinue treatment with Dr. Buche and the prescribed medication after worker's compensation denied approval.

7. On May 20, 2013, psychiatrist and Qualified Medical Examiner (QME) Hosein Tahami, DO,<sup>2</sup> evaluated Moore for her worker's compensation claim. Dr. Tahami diagnosed depression and anxiety, observing that she had not been offered psychiatric treatment in the form of pharmacotherapy and psychotherapy. He further opined that "[p]ermanent disability based on psychiatric illness is not anticipated should the claimant be offered adequate psychiatric treatment in the form of medications and therapy."

8. Dr. Tahami reevaluated Moore on June 9, 2014. At that time, Moore had been prescribed antidepressants by her primary care physician and was participating in therapy. Her affect, speech, orientation, memory, thought process and content, and judgment were normal, and she had fair insight. Dr. Tahami noted a "significant improvement" in her depression, anxiety, and mood symptoms since his last evaluation, likely attributable to treatment with medication and therapy. Moore did not voice any significant complaints, other than some mild residual anxiety. Dr. Tahami assessed a Global Assessment of Functioning (GAF) score of 80, which corresponded to no disability, but emphasized that treatment with medication and therapy should continue to prevent potential relapse.

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<sup>1</sup> MD is an abbreviation for Doctor of Medicine.

<sup>2</sup> DO is an abbreviation for Doctor of Osteopathy.

9. Moore continued treatment for her psychological condition, primarily with nurse practitioners Julie Fadness and Joshua Middlekauff, who prescribed her psychiatric medications. Moore attended counseling and followed all prescribed treatment authorized by worker's compensation coverage. Nevertheless, records from 2016 onwards indicate that Moore experienced gradually increasing anxiety, depression, and panic attacks, with isolated periods of improvement. On August 2, 2019, Ms. Fadness opined that Moore was "currently substantially incapacitated from the performance of the usual duties" of her CO position due to anxiety and post-traumatic stress disorder (PTSD), and that incapacity would be permanent.

10. Around September 2019, Moore was finally approved by worker's compensation insurance to see a psychiatrist. She presently sees psychiatrist Michael McNamara, MD, for medication management and receives therapy from Kathleen Peters. Moore has not worked for any employer since her May 2011 injury.

### **MOORE'S APPLICATION FOR IDR INCLUDING HER PSYCHOLOGICAL CONDITION**

11. On May 10, 2019, Moore signed an application for IDR based on her psychological and orthopedic (left ankle) conditions (2019 Application). CalPERS received the 2019 Application on May 14, 2019.

12. At CalPERS's request, Moore underwent a psychiatric evaluation by psychiatrist and Independent Medical Examiner (IME) Alberto Lopez, MD, on September 18, 2019. Dr. Lopez received his medical degree from Stanford University School of Medicine in 1979, and completed his psychiatric residency at the University of California, San Francisco Medical School in 1983. He has been a board-certified, practicing psychiatrist since 1986, and only retired from his most recent staff

psychiatrist position with the City and County of San Francisco earlier in 2020. Over the course of his career, he has performed approximately 100 IME evaluations.

As part of his evaluation in this case, Dr. Lopez reviewed Moore's records, including her treatment records, requirements and essential functions of her CO position, and 2019 Application; interviewed Moore; performed a complete psychiatric examination; and completed psychological testing. He noted that she was "extremely distraught, and I think it is genuine, sincere, and real." He diagnosed Moore with anxiety and a persistent depressive disorder. Based on his evaluation, Dr. Lopez opined that Moore has "actual and present anxiety and depression which arises [*sic*] to the level of substantial incapacity to perform her actual duties." Although it was possible that she could improve, her condition was likely to last 12 months or longer given the chronicity of her symptoms.

As for the disability onset date, Dr. Lopez explained as follows:

I cannot say with certainty how long she has been disabled on a purely psychiatric basis. Her depression began shortly after her injury and her severe anxiety sometime after that. She entered treatment with Dr. Buche on [*sic*] August 2012. The more recent records well document her quite severe symptoms. Of note, she was not severely incapacitated when seen by QME Dr. Tahami in June of 2014. Therefore, the current psychiatric disability would have begun sometime after that.

Based on his review of Moore's treatment records, Dr. Lopez's best estimate was that her substantial incapacity was present as of November 2018.

13. On October 16, 2019, CalPERS denied the 2019 Application. First, CalPERS explained that, given the CalPERS Board's prior final decision denying the 2015 Application based on Moore's orthopedic condition, no further determination regarding that condition would be made. Second, CalPERS reasoned that the evidence established that Moore only became disabled by her psychological condition on November 2018. Consequently, it determined that Moore failed to establish that she had been disabled by her psychological condition since October 30, 2013, the date she discontinued state service. Moore timely appealed.

14. On February 27, 2020, Keith Riddle, Chief of CalPERS' Disability and Survivor Benefits Division, filed the Statement of Issues for purposes of the appeal. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

## **Discussion**

15. Moore discontinued state service on October 30, 2013. She remained on an approved leave of absence until June 6, 2018, when she resigned and formally separated from state employment. On May 14, 2019, she filed the 2019 Application. Under Government Code section 21154, because she did not file the 2019 Application while she was in state service, within four months of discontinuing state service, or while on an approved leave of absence, she must demonstrate that she was continuously disabled from October 30, 2013, the date she discontinued state service, through May 14, 2019, the date she filed the 2019 Application. (Gov't Code, § 21154, subd. (d).)

16. As an initial matter, any evidence concerning Moore's orthopedic condition cannot support granting the 2019 Application. The CalPERS Board's April 19, 2017 decision finding that Moore was not substantially incapacitated on the basis of her orthopedic condition is final. Even assuming, without deciding, that Moore's orthopedic condition is presently disabling, that final decision precludes a finding that Moore was continually disabled from October 30, 2013, through May 14, 2019, based on her orthopedic condition.

17. Additionally, although the parties agree that Moore is presently disabled by her psychological condition, Moore failed to demonstrate that she was substantially incapacitated by her psychological condition continuously from October 30, 2013, through May 14, 2019. IME Dr. Lopez's best estimate was that Moore's substantial incapacity was present as of November 2018. To the extent that Ms. Fadness suggested that Moore has been disabled since October 30, 2013, that conclusory opinion is plainly contradicted by Dr. Tahami's detailed assessment in June 2014, which found no substantial incapacity at that time.

18. Consequently, Moore has not met her burden of demonstrating that she was continuously disabled by her psychological condition from October 30, 2013, when she discontinued state service, through May 14, 2019, when she filed the 2019 Application. Thus, the 2019 Application was properly denied.

## **LEGAL CONCLUSIONS**

1. As the applicant, Moore has the burden of proving by a preponderance of the evidence that her 2019 Application for IDR should be granted. (Evid. Code, § 500 ["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 [s]he is asserting"]; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.) A preponderance of the evidence means "evidence that has more convincing force than that opposed to it." (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

2. Government Code section 21154 sets forth the timeline for filing an application for IDR, and provides, in relevant part:

The application shall be made only (a) while the member is in state service, . . . or (c) within four months after the discontinuance of the state service of the member, or while on an approved leave of absence, or (d) while the member is physically or mentally incapacitated to perform duties from the date of discontinuance of state service to the time of application or motion.

3. Based on the Factual Findings as a whole, and specifically, Factual Findings 15 through 18, Moore failed to demonstrate that she was substantially incapacitated from performing her usual and customary duties as a CO on the basis of a psychological condition from October 30, 2013, the date she discontinued state service, through May 14, 2019, the date she filed the 2019 Application. Consequently, her 2019 Application was properly denied.

## ORDER

The appeal of respondent Brooke R. Moore is DENIED. CalPERS' decision to deny Moore's application for industrial disability retirement filed on May 14, 2019 is AFFIRMED.

DATE: October 20, 2020

DocuSigned by:  
*Wim van Rooyen*  
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WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings