

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:**

**JAMES E. ROBINSON, Respondent;
SALINAS STATE PRISON, CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION, Respondent.**

Agency Case No. 2022-0321

OAH No. 2022080745

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on January 18, 2023, by videoconference.

Senior Attorney Cristina Andrade represented complainant Keith Riddle, Chief of the Disability and Survivor Benefits Division of the California Public Employees' Retirement System.

Respondent James E. Robinson represented himself.

No one appeared representing respondent Salinas State Prison, California Department of Corrections and Rehabilitation.

The matter was submitted for decision on January 18, 2023.

FACTUAL FINDINGS

1. James E. Robinson (respondent) worked for many years as a correctional officer at the Salinas State Prison, in the California Department of Corrections and Rehabilitation. This employment made respondent a state safety member of the California Public Employees' Retirement System (CalPERS).

2. Effective July 31, 2021, respondent retired for service. When he applied to retire for service, respondent also applied in the alternative to retire for industrial disability.

3. Respondent's application identified the health problems that he alleges prevented him from continuing to work as a correctional officer as "residual COVID-19 pneumonia, paraseptal emphysema, PTSD."¹ He identified the specific conditions limiting his activity as "respiratory distress, neurological tremors, cardiac irregularity, PTSD."

4. Acting in his official capacity as Chief of the CalPERS Disability and Survivor Benefits Division, complainant Keith Riddle notified respondent by letter dated January 10, 2022, that CalPERS would deny respondent's application to retire for industrial disability. The letter stated that respondent had failed to present medical evidence supporting any allegation of "cardiological, neurological, psychological, [or] orthopedic conditions." The letter stated as well that CalPERS had evaluated medical

¹ PTSD, or post-traumatic stress disorder, is a mental illness.

evidence relating to respondent's allegation of ongoing respiratory illness, but that this evidence did not establish that any such ongoing illness was disabling.

Respondent replied with a timely written appeal.

5. Again acting in his official capacity, complainant signed a Statement of Issues on July 12, 2022. The statement of issues alleges that neither pneumonia nor paraseptal emphysema prevented respondent from continuing his employment at the time respondent retired. At the hearing, respondent stated that he also intended his appeal to challenge the determination that his non-pulmonary health problems fail to qualify him for industrial disability retirement.

Employment History and Duties

6. As a correctional officer, respondent supervised inmates and maintained order in a prison. He walked and stood frequently, and occasionally ran. He sometimes needed to carry or move heavy objects, including people, such as when responding to medical emergencies or subduing violent inmates.

7. In addition to its physical demands, respondent's work was emotionally stressful. Some inmates were unpredictable and dangerous, to themselves, to one another, and to correctional officers. Respondent needed to communicate clearly and respectfully with colleagues, inmates, and visitors, while remaining vigilant to protect inmates, officers, and the public against harm.

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Pulmonary Condition

8. Respondent was very ill for several months in 2021 with COVID-19. He believes reasonably that he caught the disease in his workplace in early February.² Before this illness, respondent felt fully capable of performing all his usual duties.

9. While ill, respondent was unable to work or to engage in nearly any ordinary daily activity, beginning in mid-February 2021 and continuing for about three months. He estimates that because of inactivity and poor appetite, he lost about 40 pounds in body weight during this period.

10. Respondent eventually recovered from his acute, severe respiratory illness. His cough lingered, and respondent developed some shakiness and shortness of breath. A chest x-ray in March 2021 showed no abnormality, but a CT (computerized tomography) scan in May 2021 showed small areas of inflammation throughout the lungs as well as emphysema in the upper lung lobes.

11. Board-certified pulmonologist Sharad K. Dass, M.D., examined and evaluated respondent on September 29, 2021. Dr. Dass observed that respondent emphasized “tremulousness and knee pain” as the main limits on his activity at that time, and did not exhibit shortness of breath or unusual coughing while he was in Dr. Dass’s office. The physical examination, which included listening to respondent’s lungs with a stethoscope, palpating his torso, and measuring his blood oxygen saturation,

² If necessary, any determination as to whether respondent’s incapacity for continued work is occupational in origin is a matter for the Workers’ Compensation Appeal Board. (Gov. Code, § 21166.)

also did not indicate to Dr. Dass that respondent was experiencing any diminished lung function on September 29, 2021.

12. Dr. Dass testified that the emphysema visible on respondent's May 2021 CT scan is minor. Though irreversible, it involves a small enough lung area that Dr. Dass doubts that it affects respondent's ongoing ability to engage in physical exertion. Moreover, Dr. Dass notes that emphysema develops gradually, over many years' exposure to airborne toxins; respondent's minor emphysema most likely developed, and existed, long before his COVID-19 infection.

13. The inflammation visible on respondent's May 2021 CT scan likely resulted, in Dr. Dass's opinion, from respondent's COVID-19 infection. Dr. Dass noted that the CT scan revealed no permanent lung scarring. His medical opinion is that the inflammation would have been likely to resolve fully within a few more months, and unlikely to compromise respondent's lung function in the long term.

14. Respondent believes that Dr. Dass overestimated both respondent's physical fitness in September 2021 and his probability of making a full recovery from COVID-19. He presented no medical evidence contradicting Dr. Dass's opinions.

15. Dr. Dass understood respondent's duties as a correctional officer to involve physical exertion and mental stress, as described in Findings 6 and 7. Because of the matters stated in Findings 11 through 13, however, Dr. Dass concluded that respondent did not experience significant enough limitations in his lung function in mid- to late 2021 to incapacitate him from his usual duties as a correctional officer. Furthermore, Dr. Dass concluded that any residual limitations respondent did experience several months after his COVID-19 infection would be more likely to resolve rather than to be permanent. These un rebutted opinions are persuasive.

Non-Pulmonary Conditions

16. Respondent testified credibly that he suffers from ongoing anxiety, and occasional panic attacks. He sleeps very poorly, and sometimes feels shaky while awake. He is unable to sing (which he formerly did regularly) because of breathlessness, and believes his unsteady hands would prevent him from using a firearm accurately.

17. Respondent attributes much of his ongoing anxiety to fear of contracting COVID-19 again, after his difficult and prolonged experience with it in early 2021. He reasonably perceives the prison in which he formerly worked as an especially risky environment for COVID-19 transmission, and notes as well that it was a high-risk workplace even before the COVID-19 pandemic.

18. Despite his credible testimony about his day-to-day condition, respondent offered no medical evidence to support his allegations that he suffers from neurologic, cardiac, or mental illness that impairs his ability to perform his former duties as a correctional officer.

LEGAL CONCLUSIONS

1. Respondent may convert his service retirement into disability retirement if, at the time he retired, he was "incapacitated for the performance of duty." (Gov. Code, § 21150, subd. (a).) He must present "competent medical opinion" demonstrating his inability to work, and demonstrating that this inability is "of permanent and extended duration." (*Id.*, § 20026.)

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2. The matters stated in Findings 16 through 18 involve no competent medical opinion addressing any mental, neurological, or cardiac illness respondent may have experienced in July 2021. These matters do not establish either that respondent was unable to perform his duties as a correctional officer in July 2021 because of any mental, neurological, or cardiac illness, or that any diminished ability he may have had on that date was of permanent and extended duration.

3. The matters stated in Findings 8 through 15 do involve competent medical evidence addressing respondent's pulmonary illnesses. These matters do not establish, however, either that respondent was unable to perform his duties as a correctional officer when he retired in July 2021 because of any pulmonary illness, or that any diminished ability respondent may have had when he retired was of permanent and extended duration.

ORDER

The application by James E. Robinson for industrial disability retirement is denied.

DATE: **01/26/2023**



JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings