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 Reinstatement from Industrial Disability Retirement of:	
MATTHEW EISENMAN, Respondent, and CALIFORNIA HIGHWAY PATROL, Respondent.	Case No. 2011-0818 OAH No. 2014050166

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings (OAH), on November 13 and 14, 2014, and on April 7, 8, and 9, and May 15, 2015, in Sacramento, California.

Rory Coffey, Senior Staff Counsel, represented the California Public Employees' Retirement System (CalPERS).

Anthony M. Santana, Attorney at Law,[1] represented Matthew Eisenman (respondent) who was present.

Susan E. Slager and Michael E. Whitaker, Supervising Deputy Attorneys General, Office of the Attorney General, California Department of Justice, represented the California Highway Patrol (CHP).

[1] Anthony M. Santana, Legal Counsel, California Association of Highway Patrolmen, 2030 V Street, Sacramento, California 95818-1730.

Evidence was received and the record remained open for parties to submit written closing arguments, which were timely received and marked as Exhibits 27, Y, Z, and E.F.[2] The record closed on August 17, 2015.

FACTUAL FINDINGS

Procedural History

1. On May 2, 2014, petitioner, Anthony Suine, Chief Benefit Services Division, Board of Administration, California Public Employees' Retirement System (CalPERS) made and filed the Statement of Issues in his official capacity. CalPERS alleged that respondent, who had retired from CHP and was receiving industrial disability retirement benefits, was "no longer substantially incapacitated from the performance of his usual job duties as a State Traffic Officer, and ... is eligible for reinstatement." By letter dated September 3, 2010, CalPERS notified respondent and CHP of its determination. CHP appealed CalPERS' determination on grounds that respondent remained disabled on the basis of a psychological condition and was, therefore, disqualified from reinstatement to his former position.

2. Matthew Eisenman was employed by CHP as a State Traffic Officer in 1992. He last performed the duties of a CHP officer in September 2006. By virtue of this employment, respondent was a member of CalPERS subject to Government Code section 21151.

3. On June 13, 2008, respondent signed his application for industrial disability retirement (Disability Application).

a. Respondent described his industrial disability as follows:

> Post-traumatic stress disorder [PTSD] and acute stress on 09/14/06 CHP Sgt. Carpenter...and CHP Sgt. Evans...threatened me with insubordination when I asked for a break during a closed door counseling session. I began to have flashbacks of a suicide I was a witness to, on the job.

b. Respondent's limitations were "I have unpredictable attacks of rage."

c. Respondent stated that his injury had affected his job as follows:

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[2] CHP's Initial Closing Brief was marked as Exhibit Y. Responsive Closing Briefs were submitted by respondent Eisenman and CalPERS, and marked for identification as Exhibit E.F. and Exhibit 27, respectively. CHP's Reply Closing Brief was marked as Exhibit Z.

I am unable to perform the duties of a highway patrolman. I may physically injure a person in an unpredictable attack of rage.

4. James Park, Ph.D., completed respondent's Physician's Report on Disability. Dr. Park listed the following diagnoses: PTSD, chronic, Intrusive Thoughts/nightmares about work/anxiety; and Major Depression, in good remission. CalPERS received this disability report on June 26, 2008.

5. Respondent remained off work from approximately September 2006, and submitted his Disability Application in June 2008. On November 10, 2008, CalPERS notified respondent by letter that "your application for disability retirement has been approved. You have been found substantially incapacitated from the performance of your usual duties as a State Traffic Officer with the [CHP], based upon your psychological condition...Your industrial disability retirement will be effective immediately." Respondent has been receiving a retirement allowance since that time.

6. Approximately one year later, on December 18, 2009, respondent sent an informal letter to CalPERS requesting to reinstate as a CHP Officer. On April 7, 2010, respondent filed his "Reinstatement from Disability/Industrial Disability Retirement Application," seeking return to active CalPERS membership with his former employer. CalPERS obtained and received relevant treatment records concerning respondent's psychological condition. After reviewing the reports, CalPERS determined that respondent was capable of performing the job duties of a State Traffic Officer with CHP.

7. On September 3, 2010, CalPERS notified respondent and CHP that respondent was approved for reinstatement. CalPERS cited Government Code section 21193, which sets forth two conditions that must be met to reinstate a member and discontinue a retirement allowance: 1) CalPERS has determined that the member is no longer substantially incapacitated, and 2) the employer has offered the member the job. The notice also informed the parties of the employer's right to appeal CalPERS' decision.

8. CHP timely requested an informal appeal pending the completion of CHP's own reinstatement review process to include testing and a background investigation. CHP arranged for respondent to be psychologically evaluated through the State Personnel Board (SPB). On May 9, 2011, CHP concluded that respondent was disqualified for return to his law enforcement duties. On June 16, 2011, CHP wrote a letter to CalPERS citing Government Code section 1031, subdivision (f), which requires peace officers to be "free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer." CHP determined that respondent did not meet the minimum standards for a peace officer and should continue to receive his disability retirement benefits.

9. This appeal is limited to the issue of whether respondent remains disabled or incapacitated from performance of his usual job duties as a State Traffic Officer with the CHP.

Pre-Retirement Industrial Injury

10. Respondent is currently 49 years of age. His psychological problems stem from several job-related traumatic incidents. He witnessed numerous fatalities secondary to motor vehicle accidents. The first notable incident occurred in September 2005, after respondent arrested a 17-year-old suspect for drunk driving. The breathalyzer test was inconclusive and respondent transported the teenager home to his father. Moments after arriving home, the young man went into the garage and killed himself via a gunshot to the head. Respondent developed feelings of guilt, anxiety, grief, and stress. The next notable incident occurred a few months later in November 2005, when respondent arrived at a traffic fatality involving a two-year-old girl. Being the father of an infant son, respondent personalized the scene. Also, at the time, respondent was under pressure from his supervisors to increase ticket writing. Finally, within an 18-month period, three CHP officers with whom respondent had worked committed suicide.

11. Respondent's annual Performance Appraisal ending August 2005 indicated that he "meets" all standards. There were noted concerns regarding his performance in two critical tasks: judgment and written communications. The report documented a failure to complete reports and communicate with supervisors, and inappropriate reactions to constructive criticism/direction with "unacceptable anger." He had used 62 hours of personal sick leave during the period, which was less than the previous year but "still above the average."

12. Respondent's annual Performance Appraisal ending August 2006 indicated that he "meets" all standards. However, there were concerns with his compliance with policies, procedures, laws, codes, and regulations. His performance was noted to be "marginal at best" particularly in the area of enforcement. For seven of the 12 months, his rating in this area was "needs improvement." Respondent was also lacking in the area of judgment and had "taken a stance of non-communication with the area's supervisors."

13. Respondent began seeing a therapist in 2005 and a psychiatrist in 2006. The final incident at work occurred in September 2006, at a performance conference with his superiors. As recounted in Joanne Danti, M.D.'s disability report:

> During the session, the applicant became upset and tried to leave but was told to sit back down. Then he attempted to write notes in his notebook and was told to stop writing. It was also noted that he had raised his voice so loud he could be heard all the way to the front of the office. At that point he began to shake uncontrollably and had flashbacks of the teenage suicide he witnessed. Subsequently, the applicant went to the locker room

and began throwing things in his locker, slammed his locker door, kicked his locker, and kicked the locker across from his.

Respondent's conduct resulted in a three-day suspension. Respondent developed symptoms of PTSD including sleep disturbances, decreased appetite, poor energy and concentration, and crying. He considered killing himself but reported he had never tried or developed a plan. He remained on leave through Worker's Compensation for two years until his leave credits were exhausted, and then applied for industrial disability which was granted in late 2008.

History of Treatment

15. Prior to his grant of industrial disability retirement, respondent received psychological evaluations and treatment from several providers. He was ultimately diagnosed with Depression and PTSD. His diagnoses and supporting treatment notes are summarized below.

16. *James Park, Ph. D.* Dr. Park treated respondent in 2001 for anger management and from 2005 to present for PTSD, depression, and marriage counseling. In 2005, respondent presented with symptoms of insomnia, daytime flashbacks, sobbing, absent-mindedness, and distractibility. He suffered flashbacks of the teenager's suicide that included "seeing blood seeping underneath my bedroom door." Dr. Park's initial diagnoses were Acute Stress Disorder and Depression stemming from workplace trauma. Dr. Park referred respondent for a medication assessment, and recommended respondent leave work for three months. In October 2006, respondent began taking Seroquel and Zoloft (antianxiety and antidepressant), and Ambien as prescribed by nurse practitioner Mr. Les Julian under psychiatrist Dr. Ahmed Abouesh. His depression and stress was noted to "decrease significantly" when away from work. Mr. Julian urged respondent to seek another vocation because of the likely reoccurrence of a roadside fatality.

During treatment, respondent reported feeling overwhelmed with anxiety, problems with crying, emotional reactivity, nightmares, difficulties with day-to-day functioning, sadness, hallucinations, memory lapses, intrusive thoughts, suicidal thoughts, and that he was irritable and short-tempered with his wife. Respondent experienced an "exaggerated startle response" from loud noises or children at play. For instance, when a dog in an adjacent pickup truck barked at him, respondent jumped and reported that if he had had his gun, he would have shot the dog.

17. Dr. Park's hand-written treatment notes from 2007 through 2013 were submitted in evidence and are summarized below.[3] Dr. Park's notes evidence a bias against

[3] It is noted that Dr. Park's treatment notes were received in two separate exhibits with some overlap and some pages/treatment dates missing. The notes submitted by CalPERS are marked as Exhibit 17, and span from February 2009 to June 2010. The notes submitted by CHP are marked as Exhibit T, and span from February 2007 to December 2013.

CHP and the State Personnel Board psychologist/screening process. These obvious biases call into question the soundness and objectivity of Dr. Park's stated opinions and treatment.

a. February 16, 2007 – "CHP wants to suspend for three days for insubordination. ...Nightmares and PTSD symptoms...Knowing that patient has suffered a stress injury as result of work incident and knowing that the symptoms are severe – this action, in my professional opinion, is CHP's harassment to this vulnerable man...There was never any intent by this patient to be insubordinate and insubordination is an intentional action. Looks like retaliation to me, is my opinion. Discussed some CBT [cognitive behavioral therapy] strategies." (Underline in original.)

b. February 21, 2007 – "This adverse action report is inappropriate, further injurious to [respondent] and the insensitivity of CHP to do this knowing his vulnerability is very poor judgment and probably harassing, especially when they tell him he has only ten days to respond, which means he has to relive everything in detail when he is not psychologically/medically capable to do so. Reports memory interference..."

c. August 8, 2007 – "Had an incident camping with family which seems to demonstrate that due to his reactivity from PTSD that he may not be able to go back into law enforcement. Was confronted by male camper late at night trying to restrict his passage. Eventually resolved."

d. April 23, 2008 – "Patient went to lunch with a few of his CHP friends/retirees today and [*sic*] one he gave a ride to needed to go by the CHP office...patient reports that just being at the office, that environment with the radio going off, etc, made him anxious to the point of shaking – that experience he says just proved to him that he can't return to that job, which is obvious due to the PTSD symptoms it aroused. Lasted couple hours."

e. August 27, 2008 – "Patient will permanently be unable to return to his CHP job as an officer and unable to take any position in any paramilitary employment structure."

f. September 3, 2008 – "As I stated last week, patient's disability and PTSD precludes him from ever doing law enforcement duties or even being employed in any department associated with law enforcement. So disability retirement appears to be the proper decision."

g. January 29, 2009 – "Patient reports he had a nightmare Monday and it was job related...he was a CHP officer responding to a scene where a guy was rampaging...said he felt anxious, depressed in his dream, frustrated and distressed...Coworkers coincidentally asked him if he were ever going to go back to

the CHP the next day and especially after the nightmare night before he felt relieved that he could tell them no."

h. August 5, 2009 – "Patient reports he is still taking Zoloft and it is helping as he gets some "down" times …sleeping ok so not taking Seroquel for the last few weeks."

i. October 21, 2009 – "Patient is experiencing stresses from financial status. He is limited in his income and his commitments for income with mortgages, etc. due to his divorcing status. He is trying to sell his home but his wife is not cooperating…*Still taking his Zoloft*, but not feeling the need for Seroquel. Staying active socially which is … keeping him positive."

j. December 16, 2009 – "Patient is still having emotional ups and downs with the moving and loss of his dream house and marriage…not taking any medications and seems to be okay without them…He is going to apply for reinstatement with CHP and depending on his position he should have no problems doing so."

k. January 20, 2010 – "Patient reports he has 'troubled dreams'…has to do with the recent losses in his life…using CBT…still feels like he doesn't need medications."

l. February 17, 2010 – "Illness zapped his energy so he has been tired and believes caused some depressive symptoms…Patient has been continuing to maintain his social contacts and activities, which helps with depression and tendencies to withdraw and isolate. Some continuing improvement with resolving PTSD."

m. March 17, 2010 – "Patient reports that his sleep continues to be disturbed due to dreams that make it difficult to shuck off his thoughts and go back to sleep…I encourage his CHP reinstatement." March 31, 2010 – "PTSD shows improvement…Uses CBT to deal with his depression."

n. April 28, 2010 – "Patient has continued using the CBT strategies learned in therapy to cope with current life stresses and any symptoms of PTSD."

o. July 14, 2010 – "I continue to recommend strongly his reinstatement as a CHP Officer."

p. September 30, 2011 – "Still hopes to be reinstated with CHP and there is no psychological reason he can't be. State Personnel Board is being arbitrary and unfounded in their conclusion not to reinstate patient as is."

q. February 13, 2013 – "Contrary to the State Personnel Board's psychologist errors in psychological test interpretation and diagnostics patient is ready to function successfully as a CHP officer."

r. July 23, 2013 – "Patient is coping well, which reinforces his ability to currently deal with whatever may present itself...this is 'real life' exposure and CHP coping response, not a State hired evaluative Psychologist who bases an opinion on limited data only and limited experience working with severe PTSD individuals." (Underline in original.)

18. *Clifford Straehley, III, M.D.* For purposes of worker's compensation, Dr. Straehley performed a psychiatric qualified medical evaluation (QME) of respondent in December 2006 (Report dated January 4, 2007) and November 2007 (Report date January 9, 2008). Dr. Straehley reviewed prior treatment records, and examined and interviewed respondent.

19. At their initial psychiatric QME in December 2006, respondent reported that he became apprehensive when driving past the Chico CHP office and that he avoided driving by locations of prior gruesome accident scenes. He purposefully avoided violent television, radio, and media. For a brief time, he believed his home was being spied on by helicopters or airplanes overhead. Respondent was taking Sertraline (antianxiety/antidepressant) and Seroquel (anxiety and insomnia). Dr. Straehley confirmed Dr. Park's diagnosis of Acute Stress Disorder (DSM IV 308.3) and Major Depression (DSM IV 296.33) with psychotic features. Dr. Straehley opined in his report that respondent had developed a "new persistent vulnerability." This is when an individual who has experienced multiple episodes of psychological trauma becomes like a "fragile eggshell," and is more vulnerable to the next episode of psychological trauma.

20. At their second psychiatric QME in November 2007, respondent reported experiencing severe traumatic reactions when contacted by a former CHP supervisor. This Sergeant had come to respondent's home to deliver a notice of adverse action and a bill. Respondent was subsequently suicidal for a week; what Dr. Straehley referred to as "severe, but temporary psychiatric deterioration." Respondent's wife expressed concerns that respondent might kill himself. Respondent was tearful when discussing his job. He reported panic attacks with symptoms of nausea, tachycardia, shortness of breath, and uncontrollable shakes lasting 15 minutes.

21. Respondent acknowledged problems with rage reactions. For example, while walking his dog, respondent encountered a man allowing his dogs to run off-leash. One of the other dogs bit respondent's dog. A verbal confrontation ensued and respondent picked up the man's bicycle intending to hit him with it. In a separate incident at Halloween, respondent's four-year-old son was passing out candy at their home and a teenage reveler pushed into his child. Respondent, who had been in another room and overheard the incident, ran out of the house, "grabbed the kids, grabbed their candy, and threw the candy at them as hard as he could." Dr. Straehley reported that respondent was "intense and mildly annoyed" when speaking of these encounters. Relative to his public irritability, respondent reported to Dr. Straehley that his wife was "afraid that I might kill somebody at the highway patrol."

22. In his January 2008 report, Dr. Straehley diagnosed respondent as having moved "from Acute Stress Disorder to PTSD, chronic of moderate severity." He opined:

> I think he needs a permanent preclusion from ever going back to work at CHP. Both Dr. Park and Nurse Practitioner Julien have told [respondent] they do not think it would be possible for him to go back to work at CHP. I agree. He is a fragile eggshell now in terms of his PTSD symptoms. I have encountered numerous PTSD victims with relatively good resolution, who attempt to return to work at their old job, only to experience yet another trauma. The last trauma converts them to a state of much more severe disability, and commonly it cannot be cured. It is best to leave well enough alone. Sometimes, intentional avoidance is the best treatment and him not going back to work at CHP could be regarded as such.

23. *Michael Barnett, M.D.* In October 2008, Dr. Barnett performed an Independent Medical Examination (IME) of respondent and generated a report dated October 13, 2008. Dr. Barnett reviewed treatment records, and interviewed and examined respondent.

24. Respondent's wife and two sons had moved out in December 2007, and they were getting a divorce. Respondent was experiencing financial stress having last worked in September 2006. On his last day, his supervisors had accused him of being insubordinate for talking back during an interview. He recalled punching his locker after the meeting and subsequently developing migraines, flashbacks, and "uncontrollable rage," and he never went back to work. During the interview, Dr. Barnett reported that respondent was several times "on the verge of tears." Respondent reported problems with focusing and concentrating. He was "very tremulous" and "also irritable," and "feels that this would interfere with his performance in the work place." He reported hearing voices "once a week that say weird things." There were commands for him to "kill himself at first." He feels sometimes that "the voice is the devil." Respondent would pace or turn on the radio or television in response.

25. Dr. Barnett diagnosed respondent with PTSD, chronic, and Dysthymia (300.4). He recommended switching respondent to a different antidepressant since he had been on the highest dose of Zoloft and failed with that. He also suggested switching his neuroleptic from Seroquel to Risperdal to better relax his thinking. Dr. Barnett opined that respondent's "current psychiatric symptoms are significant enough to interfere with his work performance." He found respondent to be permanently and substantially incapacitated for performance of his usual duties beginning in September 2006.

CalPERS' Evaluation of Respondent's Application to Reinstate

26. Having not worked for CHP since September 2006, respondent contacted CalPERS in December 2009, requesting to reinstate as a CHP officer. Dr. Park wrote a letter dated May 26, 2010, in which he stated that respondent had shown "very good improvement" and was "able to perform all duties without restrictions or limitations." Mr. Julian, FNP, wrote a letter dated May 28, 2010, in which he stated that respondent was "weaned off all psychotropic medications by November 2009," had maintained part-time employment, and had the mental and mood stability to perform all duties as a CHP "without limitations or restrictions."

27. *Benjamin Kaufman, M.D.* In order to assess respondent's fitness to return to duty, CalPERS arranged for Benjamin Kaufman, M.D. to conduct a psychiatric IME of respondent in August 2010. Dr. Kaufman is Board certified in psychiatry, neurology, and psychoanalysis. He has maintained a clinical practice in adult, adolescent, and child psychiatry, and psychoanalysis since 1968. He was a clinical professor of psychiatry at the University of California, Davis Medical School until 2010. He performs psychiatric consultations and medical/legal evaluations for various entities. Dr. Kaufman is Chairman of the Board at the National Association for Research and Treatment of Homosexuality (NARTH). At hearing, Dr. Kaufman confirmed that NARTH believes in the efficacy of conversion therapy for homosexuality. He conceded that the American Psychological Association "vigorously" disagreed with this treatment modality.

28. In preparation for the IME, Dr. Kaufman reviewed respondent's relevant psychiatric treatment records and performed a mental status examination while interviewing respondent. Dr. Kaufman prepared a report of his findings dated August 30, 2010. He did not conduct any psychological testing or administer any psychological questionnaires.

29. During the IME, respondent reported that with the help of Dr. Park, he had successfully mastered his emotional and mental health issues. He denied any continuing flashbacks, anxiety, insomnia, suicidal ideation, or other symptoms. He denied crying or emotional breakdowns, and suspecting others of malevolent intent. He was socially interested and active, and enjoyed the company of friends. He was not on any medications. He was eager to return to law enforcement.

30. Respondent told Dr. Kaufman of certain post-retirement incidents that made him want to return to law enforcement. He had performed the Heimlich maneuver on a woman in a lunchroom for which he was celebrated as a hero. Another time, respondent was walking in a residential neighborhood when he spotted a man exit a home. The man was acting in an "unusual" manner and ran as respondent approached. Respondent did not catch the man but notified authorities. The "rush" respondent felt from helping others made him realize that he wanted to return to the CHP.

31. Dr. Kaufman's mental status examination found respondent alert, well-groomed, coherent, with normal mood, and logical thought and expression. Respondent presented as honest with "no evidence of the stigmata of [PTSD] nor a mood disorder." His memory and concentration were intact; his fund of knowledge was normal. Dr. Kaufman's diagnosis was: "AXIS I – PTSD, resolved, complete, There is no mood disorder." In answer to CalPERS' specific questions, Dr. Kaufman opined that respondent's "condition is normal with a clearing of all symptoms mentioned in the report of Dr. Straehley, Dr. Barnett, and the notes of Dr. Park." He was, therefore, "Not incapacitated to perform any of the duties described in the job description. There is no disability."

32. At hearing, Dr. Kaufman expressed his belief that a person diagnosed with PTSD had the potential for complete recovery. He disagreed with other experts in this case, namely Matthew Carrol, M.D. and Joanne Danti, M.D., that PTSD is not a curable condition. Dr. Kaufman cited his experience as a doctor in the Navy, when soldiers were treated and after a very short period of time, placed back on the battlefield and into combat conditions of the Vietnam War. It is noted that the pressures and objectives of returning a soldier to duty in a combat zone and returning a peace officer to duty in a civilian public safety capacity are fundamentally different.

Dr. Kaufman cited the DSM-IV which states that the duration of PTSD symptoms varies, with "complete recovery occurring within three months in approximately half of cases." However, this DSM-IV entry goes on to say that many other cases have:

> ...persisting symptoms for longer than 12 months after the trauma. In some cases, the course is characterized by a waxing and waning of symptoms. Symptom reactivation may occur in response to reminders of the original trauma, life stressors, or new traumatic events.

Conceding this, Dr. Kaufman maintained that "symptom reactivation" was "not likely" if the individual had undergone recovery, as with respondent and other patients he has counseled. He acknowledged that he was not aware of any research suggesting it was acceptable to put a person back into the same traumatic environment after "recovery."

33. Dr. Kaufman's hearing testimony raised several concerns affecting his opinions. Dr. Kaufman initially stated that he could not recall any report of respondent being suicidal, but later admitted seeing notes that the "patient started to have suicidal thoughts." He "did not know" why he failed to include this in his IME report. Dr. Kaufman also did not include any of respondent's public rage reactions in his report. Dr. Kaufman initially stated he could not remember respondent telling him of these incidents. When pressed, Dr. Kaufman acknowledged that respondent did tell him about wanting to hit his neighbor with a bicycle and about throwing Halloween candy at children. Dr. Kaufman acknowledged that this behavior was "not appropriate" for a CHP officer or a parent. When asked why these "rage reactions" were not in his IME report, Dr. Kaufman stated, "I don't have a good answer for that." Respondent told Dr. Kaufman that CHP supervisors had directed him to

attend anger management classes. This was not in Dr. Kaufman's report and he did not have "a good answer" for why it was omitted. Regarding the locker kicking incident at work, respondent told Dr. Kaufman that he had been "angry" and "a lot of guys do that." When asked if this stuck him as inappropriate, Dr. Kaufman stated, "not in the least."

34. Dr. Kaufman agreed that a CHP officer has to deal with greater stressors than someone in a "normal" non-public safety job. Dr. Kaufman also conceded that respondent was motivated to get the best possible report from this IME.

CHP's Evidence Against Reinstatement

35. As part of the reinstatement process, CHP arranged a psychological screening. Respondent was asked to complete a Psychological History Questionnaire (Questionnaire) and undergo evaluation by a State Personnel Board (SPB) psychologist. SPB Chief Psychologist Joanne Danti, Ph. D., conducted the final review and determined that respondent did not pass the psychological screening. CHP notified respondent and CalPERS of their findings by letter dated June 16, 2011.

36. *Respondent's Screening Questionnaire*: Respondent completed the Questionnaire on December 13, 2010. As stated on the first page, the purpose of the Questionnaire was to "evaluate your psychological fitness to safely and effectively carry out the duties of the position for which you have applied. Psychological fitness clearance is required by law prior to employment in a State Civil Service position with peace officer powers." At the end of the Questionnaire, respondent was required to sign a certification, which stated: "I certify that all information provided is true and complete. I understand that any misrepresentation may be cause for disqualification or dismissal."

Respondent answered several questions relative to his mental health history including counseling, psychiatric treatment, and medication for mood and psychosis. He described counseling from "2006 till present to address PTSD from on the job injury (witness suicide)." He listed Seroquil as a "heavy duty psychotropic" and Sertaline as a "mood stabilizer," but omitted his prior use of Zoloft. Respondent gave false answers by answering "No" to the following questions:

- "Have you ever felt so stressed or depressed that it affected your work or your relationships with others?"
- "Have you ever felt so stressed or depressed that you considered or attempted suicide?"
- "Have you ever felt so stressed, depressed, or angry that you considered harming someone else?"
- "Since age 18, has anyone ever told you that you have a temper?"
- "Have you ever been counseled by a supervisor about how you get along with other people, or treat other people?"

37. It is uncontroverted that respondent suffered rage reactions and not only considered harming others but did harm others. (Factual Finding 21.) It is also established that stress and depression affected his relationships with supervisors at work, friends, and family. The record also establishes that he suffered suicidal ideation without a plan to attempt the act. (Factual Finding 20.) At hearing, respondent confirmed having "thoughts of suicide" and being asked to attend anger management by his employer to address his temper. (Factual Finding 57.) Respondent was also counseled during his evaluations about his poor interaction with supervisors. (Factual Findings 11 & 12.) These facts are established by sufficient evidence and contradict respondent's answers in the Screening Questionnaire.

38. *Joanne Danti, Ph.D.* Dr. Danti is a licensed psychologist. She obtained her doctorate in clinical psychology in February 1983. She currently works at the California Department of Human Resources (CalHR) as the Chief Psychologist. She supervises, evaluates, trains, and hires staff and contract psychologists who provide pre-employment screening evaluations. She also consults with hiring agencies involved in law enforcement selection services. Prior to this, Dr. Danti was in private practice and performed Veteran's Administration disability evaluations and treatment at in-patient psychiatric hospitals for children and adults. She worked with the California National Guard as an embedded psychologist. Dr. Danti performs peace officer evaluations for new hires, and for permissive and mandatory reinstatements.

39. Dr. Danti testified that criteria for PTSD include hyper-arousal (looking over shoulder, disturbed sleep), intrusive thoughts, mood disorder (anxiety, depression), and avoidance behaviors. She stated that recovery from symptoms of PTSD is more like "going into remission," rather than being "cured." The patient can do daily activities with less stress. However, symptoms can be "re-triggered or reactivated with the same events." Of particular concern is Dr. Danti's assertion that re-exposure to the same environment where symptoms started would actually be the "worst scenario for recurrence."

40. Dr. Danti is familiar with Government Code section 1031, subdivision (f), which requires public officers to be "free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer." She stated that, in addition, Peace Officer Standards and Training (POST) criteria must be met. Critical criteria include teamwork, substance abuse, risk taking behavior, honesty and integrity, emotional regulation and stress tolerance, decision making and judgment, and persuasiveness (air of authority, being present in a way that people take seriously). In performing these evaluations, Dr. Danti assesses several characteristics including interpersonal skills (how well the individual gets along with colleagues, supervisors), insight (why they do not get along well with others), and flexibility (how well the individual reacts to change). When she conducts the interview, she keeps POST dimensions in mind and looks for any concerns.

41. Dr. Danti issued her Pre-Employment Psychological Screening Report on respondent on May 9, 2011. As part of her evaluation she reviewed relevant treatment records, interviewed respondent, administered personality tests (MMPI-2 and 16PF), and

reviewed his Questionnaire.[4] POST uses these tests to assess adaptive and maladaptive traits on a continuum to identify extroversion, introversion, and other extremes that may be problematic in a safety position.

42. Dr. Danti reviewed Dr. Park's therapy notes. She explained that the goal of CBT is to correct behavior, not address the underlying cause. She stated that CBT is good for simple issues but not for complicated issues like PTSD which require you to target underlying issues. In her opinion, the best treatment for PTSD is "prolonged exposure treatment" where you "exhaust the issue until the individual calms down," or "virtual reality treatment" where you expose the patient to the environment until they calm down. Dr. Danti could find no progress notes from Dr. Park on the status or efficacy of the Eye Movement Desensitization and Reprocessing (EMDR) treatment. Also significant to Dr. Danti was that Dr. Park appeared to be "advocating rather than treating as a therapist." (See Factual Finding 17.) In Dr. Danti's opinion, Dr. Park's notes demonstrated that he was "building a case" for someone who could never go back to CHP. Then around March 2010, Dr. Park began advocating for respondent's immediate return to CHP, with no information on improvements through treatment.

43. Dr. Danti also reviewed Dr. Kaufman's evaluation report. She found his assessment to be brief with no validity testing. Dr. Kaufman, "took [respondent] at his word" without wrestling with the accuracy of the statements based on the record. Dr. Danti took issue with Dr. Kaufman's Global Assessment of Functioning (GAF) score of 90 for respondent. She stated that this high of a score suggests a cure, and PTSD is a manageable condition, not a curable condition. Dr. Danti has never given anybody a 90; and described this score "angelic almost."

Dr. Danti also looked at the report of Dr. Kennelly, who was hired by respondent to evaluate his psychological fitness to return to duty. Dr. Kennelly spoke to Dr. Park on the phone but did not review his reports. This was problematic because, as noted by Dr. Danti, Dr. Park was "advocating at this point" and there is a difference between what someone says "in summary" and the actual record. Hence, Dr. Kennelly relied on the bias and unconfirmed opinions of Dr. Park.

44. In Dr. Danti's estimation, the risk of respondent encountering another fatality as a CHP officer is 100 percent. She noted in her report that "during the interview, [respondent] had a difficult time controlling his emotions as he described the incidents that caused his PTSD." This was relevant because over five years after the incidents, "he became choked up and tearful" and had "a hard time speaking." This was an indication that respondent cannot contain himself in an emotional situation and "his best strategy is to break down." Since it is unlikely respondent would be able to avoid such incidents as a CHP officer, he "will remain more vulnerable to relapse." Research indicates that the probability

[4] The Minnesota Multiphasic Personality Inventory-2 (MMPI-2) is a self-report personality inventory where people are asked to pick true or false questions that assess for maladjusted behaviors or traits. The 16PF is a test of adaptive traits and behaviors.

of the recurrence of PTSD is greatest when the individual is going back to the exact same environment.

45. In the interview with Dr. Danti, respondent reported experiencing serious financial problems when he filed for reinstatement. He stated, "Right now I'm near bankruptcy. Hopefully this will work and I can return to state employment." He admitted suicidal thoughts about a year after the teenager was killed. His "plan for suicide was to use his gun, but he does not think he was very close to doing that because he called Dr. Park." His divorce was especially stressful and his relationship with his ex-wife remained tense. He reported yelling at her in the presence of his sons two months prior to his evaluation with Dr. Danti.

46. Dr. Danti had concerns about respondent's honesty. The results of respondent's MMPI-2 validity scales suggested respondent approached the test by minimizing psychological and behavioral difficulties and a moderate pattern of defensiveness. Thus, the results may under-estimate potential psychopathology and suggest that respondent may be "overly sensitive, guarded, distrustful, angry, and resentful." His scores were elevated for "significant interpersonal suspiciousness." Dr. Danti found these results consistent with his behavioral history. Further, his incorrect answers in the Screening Questionnaire indicate that respondent was not forthright during the evaluation and will distort the truth to create a more favorable image of himself.

47. Finally, Dr. Danti noted that respondent had a "tendency to externalize blame" which applied to his views about CHP and the "good old boys network." He believes he has been treated unfairly. She wrote, "The applicant has a cynical view of the world at large and the CHP in particular. He believes that others are out for themselves and that there is nepotism that has prevented him for [*sic*] achieving his career goals." Social competence includes the ability to "read" people and be aware of the impact of one's own words or behaviors. In Dr. Danti's opinion, respondent's "inability to reflect on his own contributions to the conflicts he experienced and his sense of both personal and professional alienation, which remains profound despite years of therapy, suggest that the applicant's ability to be aware of and respond to his social surroundings is impaired."

48. In her May 9, 2011 Psychological Screening Report, Dr. Danti articulated the reasons she believes respondent should not be reinstated as a CHP officer:

> The applicant appeared to have some difficulty with authority figures both in Redwood City and Chico [CHP Offices]...Given his extensive history of Acute Stress Disorder/Post-Traumatic Stress Disorder, there also remains a concern that the applicant may not be able to tolerate the stress of a CHP Officer. Should he come across another accident involving a child, it is likely that he will relapse ... the applicant remains a "fragile eggshell." ...he reported to his evaluating and treating doctors that he was experiencing hallucinations, delusions, and rage reactions.

> Should [respondent] decompensate while performing his duties ...he might not only be incapable of carrying out his duties but might create other problems in the field as he might over-react to a situation or be unable to respond at all due to a resurgence of PTSD symptoms. Further, [respondent] may not relate well to supervisors or co-workers whom he believes are engaged in behavior that excludes him. He reports previous interpersonal problems with supervisors...was unable to manager his own reactions relative to interpersonal issues...Therefore, there are concerns that the applicant does not meet the POST psychological dimensions for stress tolerance, emotional regulation, and social competence.

49. *Matthew Carrol, M.D.* CHP also called Matthew Carrol, M.D. to offer an expert opinion of respondent's readiness to return to CHP. Dr. Carroll is a graduate of Cornell University (Bachelor of Science in Biology, 1984), and George Washington University School of Medicine (1989). He served his internship and residency in the United States Navy, and worked as a Staff Forensic Psychiatrist at the Naval Medical Center, San Diego through 2002. He is currently a staff psychiatrist at the San Diego County Psychiatric Hospital, a Qualified Medical Examiner for the State of California, an Expert Reviewer for the Medical Board of California, and performs psychiatric evaluations including PTSD evaluations for the Department of Veterans Affairs. Dr. Carrol has conducted numerous lectures on the topic of PTSD.

50. Dr. Carrol did not examine or interview respondent. He reviewed respondent's treatment records, personnel records, and the psychological screening report of Dr. Danti. Dr. Carrol testified that in his professional opinion, respondent should not be reinstated to CHP service, because respondent has been diagnosed with PTSD and the symptoms were noted to be severe enough to display psychotic features (hearing voices, seeing things that are not there, becoming delusional). An individual who has developed psychotic features under stress is much more seriously ill and concerning for relapse.

51. Dr. Carrol stated that PTSD is not a disorder that is "cured" per se. It is not like an arm in a cast, which heals. With diseases like diabetes, schizophrenia, and PTSD, issues can be made stable or relieved with medication but not cured.

52. Dr. Carrol noted that CHP officers must be able to drive under hazardous situations, confront combative and belligerent individuals, secure accident scenes with people injured or killed, get along with the public, and interview suspects/informants, some of whom are not cooperative. Dr. Carrol stated that respondent would not be able to perform those tasks. Further respondent's history of severe anger, flashbacks, violent imagery, uncontrollable rage, and inability to maintain control in stressful situations suggests that he would not be able to react calmly and maintain personal control. Dr. Carrol stated that respondent may mean to use good judgment, but his history of psychotic images and his wife's stated fear that he might kill someone, advises against sound judgment. His

relationship conflicts on the job also create doubt that he would be able to work effectively with people, especially those who are violent, may want to fight, may have a weapon, or are potentially under the influence of alcohol/drugs.

53. Regarding the therapy respondent received from Dr. Park, Dr. Carrol noted that CBT means "thinking therapy." It requires the individual to think things through and teaches them to behave a certain way if symptoms resume, including by deep breathing and counting. EMDR employs eye movement and relaxation wherein people move their eyes while discussing an issue. The problem, as stated by Dr. Carrol, is that CHP duty is "not an office job" and these coping strategies would not be effective for an officer to employ against stressors in the field. He noted that respondent's emotional response to discussing the death of accident victims is significant because crying is a symptom of PTSD. The problem is "you can't predict what you are going to see, the field is too unpredictable."

54. Dr. Carrol criticized several other treatment providers in this case. Dr. Carrol specifically disagreed with Dr. Kaufman's assessment. Like Dr. Danti, he criticized Dr. Kaufman's GAF of 90. He explained that the GAF ranges from a score of zero (patient in a coma) to 100 (individual is perfect), and that a 90 seemed "awfully high." Further, respondent has continued to seek therapy and, "There needs to be a reason for it. It shows he is under active treatment and there are still issues to be addressed." Dr. Carrol also criticized Dr. Park for operating as an advocate while treating respondent and not looking at risks to other parties. In Dr. Carrol's opinion, there is a "significant risk" if respondent is returned to a law enforcement position. Finally, Dr. Carrol took issue with the opinions of Dr. Kennelly who did not acknowledge respondent's rage attacks and psychotic behavior in her reports. These are very serious issues. Dr. Kennelly looked at how respondent is now, without accounting for the past. Missing from her report are the records of Drs. Park, Straehley, and Barnett.

55. *Sargent Norman Carter.* CHP called Norman Carter, a Sargent with CHP for 20 years. He confirmed that respondent is not a "cadet" and has "mandatory reinstatement rights." He explained that returning offers are of two groups: permissive reinstates that want to come back after separation, and those who separate for other reasons such as medical issues. Whatever the condition underlying their separation, the returning officer is screened to make sure it no longer affects their ability to perform the duties. The background investigation applies to new and returning officers and includes driving record, credit history, physical agility, personal history and conduct questionnaires, and psychological screening. Sargent Carter stated that all officers are required to be free of mental and physical issues that would impede their duties. Even if CHP made a conditional offer of employment, the next step would be the psychological evaluation.

Respondent's Evidence in Favor of Reinstatement

56. Respondent testified on his own behalf. He joined the academy in 1992, and worked for CHP for 16 years. He was assigned to various CHP regions with his last being uniformed patrol with the Chico area office. He stated that patrol officers are faced with

threatening individuals on a regular basis. He encountered a "felony stop" involving an armed and dangerous individual, at least once a week. He has worked over 25 fatal accident scenes. He described the September 2005 teenage suicide incident and the November 2005 fatality involving the two-year-old child. He did not feel that the paramedic was "doing everything he could" for the infant. After a performance meeting in September 2006, he lost his temper and kicked a locker. He contacted therapist Dr. Park that same day and began counseling. Dr. Park diagnosed respondent with PTSD, advised him to start medication therapy, and gave respondent a note to remain off work.

57. At hearing, respondent initially stated that he had received counseling from Dr. Park from 2005 to present. When asked if he had seen Dr. Park before 2005, he admitted seeing Dr. Park in 2001 after his CHP sergeant requested him to go for anger management counseling. When asked why, he stated, "I don't recall. I was withdrawn." When pressed, he stated that his sergeant had "ordered me to make a bad arrest" and that the sergeant "became irate with me about the report I wrote." He added that this sergeant had done "some unprofessional things."

58. At hearing, respondent admitted having suicidal thoughts starting in 2006. He would awake in the morning with a feeling of "overwhelming dread." He thought about his friends who had committed suicide. He did not want to commit suicide, he just wanted the "feeling of dread" to end. He also confirmed his history of rage, hallucinations (images of blood pooling, a lightning bolt, transposed letter), and paranoia (thoughts of being regularly spied on by helicopters). He subsequently began taking Zoloft and Seroquel, but stopped in November 2009. He did not recall telling Dr. Park that his insurance company refused to authorize refill of his Zoloft "so patient decided to just discontinue the med and says he perceives no adverse symptoms...he knows to call Mr. Julian, his prescriber, if necessary."

59. Respondent's December 2007 divorce, which finalized in 2011, caused further depression. At hearing, respondent stated that he and his ex-wife were amicable at first, but "unfortunately, I had to get a restraining order against her." There is no evidence of respondent ever being granted a restraining order against his wife as the aggressor. In fact, CHP presented evidence of respondent's attempt to obtain a restraining order, which the court denied. The Recommendation and Order in Family Court Case No. FL035832, dated September 13, 2011, provides the following domestic violence summary:

> On June 6, 2011, the father filed to obtain a restraining order, alleging the mother grabbed his arm, pursued him to his vehicle, and then pounded on the car. The mother reports he pushed her away and when she followed him to talk further he yelled obscenities and threatened to break her car window. Regardless of which version it [*sic*] more accurate, it is important to note that this occurred at the award banquet following the baseball season for the boys. ... The court denied the restraining order on June 21, 2011.

Hence, respondent was not truthful when he testified that he had obtained a restraining order against his wife. This is the same level of denial that he demonstrated in the Screening Questionnaire. (Factual Finding 36.)

60. Respondent stated that his nightmares have tapered off and he has been free of them for years. He still sees Dr. Park who is supportive of him returning to work. After leaving CHP, he worked at Sierra Nevada Brewery, at Butte College, at Butte County as a Code Enforcement Officer, at a high school teaching Administrative Justice, as a truck driver hauling propane, and as a student driver instructor.

While driving the propane truck, he witnessed a hit-and-run bicycle accident. The cyclist was thrown several feet. Respondent wrote down the license plate and secured the scene while waiting for emergency vehicles to arrive. He assisted Chico police at the scene and marked the diagram. This experience also motivated respondent to reinstate. His account of this incident was corroborated at hearing by his truck partner Stephen Holmes, who stated that respondent was "very calm, consistent, and professional."

While working as a Code Enforcement Officer, respondent was assigned to marijuana abatement at potentially dangerous sites. On one occasion, he encountered a man with a shot gun standing in the road as they were leaving the property. Respondent was in a County vehicle and was unarmed. He drove up, rolled down the window, and asked the man to let him pass. Afterwards, he experienced no nightmares or insomnia. Respondent's account of this incident was corroborated at hearing by co-worker Simon Shieh, who stated that respondent was "very calm, very professional" the whole time.

61. Respondent is 49 years of age. He seeks to return to CHP because he still has "the desire to do the work," and feels it amounts to "fraud" and a "felony" to accept disability benefits from CalPERS "when I am not incapacitated." At hearing, respondent was largely well-regulated, but became visibly emotional when describing his losses of job, home, and family.

62. *James Park, Ph.D.* Dr. Park testified as respondent's treating therapist. Dr. Park has a Masters in Psychology and a Doctorate in Clinical Psychology. He is Board certified in psychopharmacology, forensic psychology, and drug/alcohol treatment. He worked as a clinical psychologist for the California Parole Department and Department of Corrections from 1992 to 2013. Dr. Park agreed with the findings of Dr. Kennelly and disagreed with the findings of Drs. Danti and Carrol that respondent's risk of relapse was high.

63. Dr. Park believes there is "recovery" from PTSD, meaning "no symptomology" even in the face of similar experiences. His treatment methods employ CBT, compartmentalizing, and EMDR. Dr. Park employed EMDR only briefly to address respondent's rage reactions but went back to CBT "tools" to address symptoms in the field. He described "compartmentalizing" as a tool individuals can use to "pigeon-hole" their symptoms so that the symptoms do not pervade their stress management and coping.

Relaxation tools included learning to breathe slowly and deeply, to calm down, and to check reality, ie., "Is this really happening?"

64. To address any future rage reactions, respondent worked on assessing whether the threat was real or just an angry reactivity, and taking interventions to keep himself and others safe. For example, respondent could cuff the suspect; if alone, call headquarters for help; if not alone, ask for help; let the suspect walk away as long as not armed until help arrived; breathe slowly; and focus on control.

65. In Dr. Park's opinion, respondent has completely recovered from his original symptoms (anxiety, difficulty sleeping and socializing, feelings of helplessness, sadness, tears, dreams, and intrusive thoughts), and these could not reoccur in a CHP job, even if respondent was exposed to another suicide or death of a child. He stated, "I think he has dealt adequately with those original memories and traumas such that they would not be easily aroused." In Dr. Park's opinion, respondent is symptom free and presents no elevated risk in returning to CHP because respondent has the skills to better cope with situations in the field.

66. Dr. Park's opinions are concerning for a lack of objectivity which he admitted was important to a therapist's role. (See Factual Finding 17.) However, when asked if he thought a therapist's role was to advocate, he replied, "It depends on what you mean by advocate." When asked to explain specific statements in his notes where he appeared to advocate for respondent, Dr. Park consistently replied, "I don't know," or "I don't remember."

For example, Dr. Park admitted having no independent knowledge about the adverse action imposed on respondent by CHP in 2006. When asked if he ever spoke to respondent's CHP supervisors, Dr. Park replied, "I don't know." When asked if he would have documented such proof, Dr. Park replied, "I would think so, but I don't know." When asked if respondent had ever been previously disciplined by CHP for insubordination, Dr. Park replied, "I don't know." When asked if he had seen respondent in 2001 for anger management, Dr. Park replied, "No." When asked what his comments about CHP "retaliating and harassing" respondent were based on, Dr. Park stated, "Just his report." Dr. Park never reviewed any of respondent's performance evaluations. Though he denied believing everything respondent told him, he could not identify any untrue statements made by respondent. Finally, Dr. Park's notes indicate symptoms of PTSD after December 2009, when respondent initiated reinstatement to CalPERS. (Factual Finding 17.) When asked if this demonstrated that respondent's PTSD was still "resolving," Dr. Park replied, "I would assume so."

67. *Jennifer Kennelly, Ph. D.* Jennifer Kennelly, Ph.D. has been a licensed psychologist for 12 years and holds a Doctorate in Clinical Psychology. She is in private practice and performs psychotherapy, testing, and evaluations; and contracts with several public agencies including Butte County Child Protective Services. She had a prior professional relationship with Dr. Park through Butte County Behavioral Health from 2001 through 2005 when she was a staff psychologist and Dr. Park conducted monthly training.

68. Applicants who dispute their psychological disqualification by CHP can request an "outside evaluation" by a non-SPB provider. Respondent's therapist, Dr. Park, referred respondent to Dr. Kennelly for an outside evaluation after respondent was denied reinstatement by CHP. At hearing, Dr. Kennelly admitted that this was "not a typical referral," and that it was "unusual" for a treating physician to do the referral for a person to return to work.

69. On June 22, 2011, the SPB sent Dr. Kennelly a packet containing the relevant laws, regulations, components of peace officer screening and the expectations for outside evaluations. The cover letter stated that the goal was to "provide a reasonable and professional judgment of a candidate's psychological suitability" while placing "primary emphasis on the rights of the California public and their need for safe and effective law enforcement officers, and at the same time balancing the rights and sensitivities of the individual applicants undergoing screening."

70. Dr. Kennelly met with respondent on July 7 and 11, 2011, conducted an interview, performed psychological testing (MMPI-2, MCMI-III), and reviewed the SPB Psychological Screening Report dated May 9, 2011. Dr. Kennelly spoke to Dr. Park by phone on July 12, 2011. Dr. Kennelly wrote in her notes that Dr. Park told her "he has no present concerns about [respondent's] ability to carry out the duties of a police officer." Dr. Kennelly completed her Psychological Evaluation report on July 22, 2011, and testified at hearing.

71. Dr. Kennelly wrote in her report that, "[Respondent] was generally euthymic throughout the interview, but became occasionally tearful when discussing painful events from the past." She wrote that this display of emotion was "in direct relation to the content of discussion and was appropriately expressed" as he moved through the description of events.

72. Dr. Kennelly testified that respondent's test results did not reveal any Axis I or II disorders, though he "spiked on the obsessive compulsive scale." In her report, she stated:

> [Respondent] does evidence traits and behaviors consistent with an obsessive compulsive personality style. While many of these traits are valued by society and can indeed be beneficial in the workplace, they may also hamper his ability to deal with uncomfortable emotions, especially anger, that might arise. It would likely benefit [respondent] to work on "letting go" of any perfectionistic styles so that he can more effectively address and work with any future disagreements or conflicts with supervisors.

73. At hearing, Dr. Kennelly concluded that respondent has fully recovered from symptoms of PTSD and Depression and that his treatment had provided him all the skills and knowledge needed to aid him in coping and effectively carrying out the duties of a peace

officer. She felt he had received effective treatment and that CBT and EMDR were the "gold standard." In her opinion, there is no risk associated with his return to work based on his psychological past. Dr. Kennelly felt that respondent's ongoing stress and sleeping problems revolved around the reinstatement process and child custody issues, which was the focus of ongoing therapy. She was aware that respondent was struggling with financial issues, but did not find this to be the primary motivation for his desire to return to work.

74. At hearing, Dr. Kennelly admitted that this was her first psychological evaluation of a peace officer. The reliability of her report findings is compromised by the fact that she did not review any medical records of Dr. Straehley, Dr. Barrett, Dr. Park, or nurse practitioner Mr. Julian. She spoke to Dr. Park by phone, but did not review any of his progress notes. Dr. Park told her that respondent had made progress and was symptom free and she believed him. Dr. Kennelly testified that treatment records were not necessary because she was concerned with how respondent was "functioning at the time" and respondent was a "good self-reporter."

75. Dr. Kennelly did not review respondent's Disability Application. Hence, she had been unaware of respondent suffering flashbacks at work. Dr. Kennelly had not seen respondent's SPB Screening Questionnaire in which several of his answers were suspect. Specifically to the question of whether he had ever felt so stressed or depressed that it affected his work or relationships, respondent answered, "No." At hearing, Dr. Kennelly stated, "what he told me is in conflict with this response."

Finally, Dr. Kennelly stated at hearing that she had been retained by respondent to perform the outside evaluation and that she was being paid directly by respondent, not his attorney. Respondent did not provide her with CHP job specifications. She stated that this did not influence her willingness to agree with him.

Assessment of Credibility

76. Several mental health professionals provided their opinions in this case, by way of written treatment notes and evaluations, and at hearing. For the reasons stated below, the experts relied on by CHP were more credible and persuasive than those relied on by CalPERS and respondent. Consequently, more weight is given to the expert opinions of CHP's witnesses.

77. *Respondent's and CalPERS' Experts.* Respondent and CalPERS were aligned in this case. In finding that respondent is no longer disabled, they relied on the opinions of psychiatrist Dr. Kaufman, and therapists, Dr. Park and Dr. Kennelly.

Dr. Park's treatment notes display a clear disdain for CHP beginning in 2006, well before respondent's application for disability retirement was filed in 2008. Then, in 2010, when respondent sought reinstatement, Dr. Park's notes show a clear disdain for the SPB psychological screening process. Dr. Park's notes reflect a lack of objectivity and a complete reliance on respondent's reports. His notes also lack information on how respondent was

utilizing the tools to reduce symptoms of PTSD. Respondent reported triggers when driving to a CHP office, speaking to a former supervisor, or driving by accident scenes. There was no evidence in Dr. Park's notes that respondent's response to these triggers was resolved. It is also concerning that Dr. Park's opinions in support of respondent's reinstatement coincide with respondent's reports of financial distress and how returning to CHP would help him. Even after respondent initiated reinstatement proceedings in December 2010, Dr. Park's notes demonstrate that respondent was still experiencing symptoms of PTSD.

Dr. Kennelly read no other treatment reports. She stated her focus was on the present. However, respondent's PTSD is the result of past trauma and the question is whether he poses an unacceptable risk based on those past traumatic experiences. Hence, Dr. Kennelly's opinions are unsupported by a consideration of relevant records and cannot be reasonably relied upon. Dr. Kennelly's opinions are also suspect for bias in that she relied on a telephone call with Dr. Park wherein he expressed support for respondent's reinstatement and respondent's uncorroborated statements to her. The importance of record review was demonstrated at hearing when Dr. Kennelly admitted that respondent had made conflicting statements.

Dr. Kaufman did not conduct any psychological testing such as the MMPI or administer any psychological questionnaires. His report did not address rage reactions or other incidents that respondent had disclosed to Dr. Kaufman. Yet, Dr. Kaufman could not explain why these relevant facts were omitted from his IME report. (Factual Finding 33.) Finally, Dr. Kaufman gave a GAF score of 90, which both Drs. Danti and Carroll described as "angelic" and "awfully high" on this record.

78. *CHP's Expert Witnesses.* CHP opposed respondent's reinstatement to active duty. In finding that respondent remains disabled and poses an unacceptable risk to the public, CHP relied on the reports and opinions of several psychiatrists: Drs. Straehley, Barnett, Carrol, and Danti.

Drs. Straehley in 2006, and Barnett in 2008, diagnosed respondent with PTSD and Depression, with psychotic features. Both found him to be permanently and substantially incapacitated for performance of his usual duties beginning in September 2006. Their reports are replete with evidence of respondent's suicidal ideation, anger, rage reactions, emotional instability, and likely risk to CHP colleagues and the public. Drs. Straehley, Barnett, and respondent's therapist Dr. Park, recommended a permanent preclusion from ever going back to work at CHP, avoidance of triggers, and a change of vocation.

Dr. Carroll did not meet with respondent but reviewed relevant records. Dr. Danti conducted psychological testing and reviewed relevant records. Dr. Danti felt that respondent remained a "fragile eggshell" and was concerned about respondent's ongoing emotional reactivity to the recollection of prior traumatic events, his cynical world view, and tendency to externalize blame, especially towards CHP. Drs. Danti and Carroll also found respondent's emotional response to recounting past trauma as significant because crying is a symptom of PTSD. Both considered that with law enforcement positions, unlike non-public

safety jobs, you cannot predict what you are going to see in the field. Hence, the tools employed in CBT would not be effective in the fast-paced driving conditions and encounters of an active duty CHP officer.

Discussion

79. Incapacity for the performance of duty is defined as the substantial inability of the applicant to perform his usual duties. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal. App. 3d 873, 877.) The *Mansperger* court looked to the duties of the claimant's position to assess whether the claimant, considering his disabilities, could perform the duties which are common and recurrent in the job or which are critical to the job. (*Id.* at pp. 875-877.)

Here, respondent was psychologically injured by repeated exposure to traumatic scenes in the course of performing his work as a CHP officer. After he left work in 2006, he continued to experience symptoms of PTSD upon re-exposure to people and places associated with CHP. In the presence of numerous treatment evaluators and at hearing, respondent demonstrated emotional reactivity when describing past traumatic events. There is a high likelihood that a CHP officer will be exposed to trauma on the job. Trauma is a critical aspect of the position and its timing cannot be predicted or avoided. As stated by Dr. Carroll, CHP officers must drive under hazardous situations, confront combative and belligerent individuals, and secure accident scenes with people injured or killed, while remaining in control.

In addition to traumatic encounters on the highways, a CHP officer must be able to maintain conflict-free relationships with superiors in the office. After his meeting with superiors in September 2006, respondent reacted with rage and never returned to active duty. There is insufficient evidence that respondent is presently able to work effectively with superiors.

Respondent cited some positive public interactions during his post-CHP employment. These positive encounters must be weighed against his other inappropriate public reactions, especially given the power and authority a CHP officer wields. The opinions of Drs. Danti and Carroll persuasively establish that even if respondent desires to exercise sound judgment, he continues to present an unacceptable risk of harm to the public. Their opinions are supported by the greater weight of reliable evidence.

LEGAL CONCLUSIONS

1. Government Code section 21220, states in relevant part, as follows:

> (a) A person who has been retired under this system, for service or for disability, shall not be employed in any capacity thereafter by the state, the university, a school employer, or by a

contracting agency ... unless he or she has first been reinstated from retirement pursuant to this chapter.

2. Government Code section 21192, states in relevant part:

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, and upon his or her application for reinstatement, shall cause a medical examination to be made of the recipient who is at least six months less than the age of compulsory retirement for service applicable to members of the class or category in which it is proposed to employ him or her. ... The examination shall be made by a physician or surgeon, appointed by the board ... at the place of residence of the recipient or other place mutually agreed upon. 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.

3. Government Code section 21193, states in relevant part:

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.

If the recipient was an employee of the state or of the university and is so determined to be not incapacitated for duty in the position held when retired for disability or in a position in the same class, he or she shall be reinstated, at his or her option, to that position...

Assessment of CHP's Denial of Reinstatement

4. Respondent claims that he is no longer disabled or incapacitated and should be reinstated pursuant to Government Code sections 21120, 21196, 21192 and 21193. The issue is whether petitioner continues to be substantially incapacitated from the performance of the duties of a CHP Safety Traffic Officer, based on a psychological condition.

Respondent has been disabled or incapacitated from the performance of his usual duties since 2006, and retired for industrial disability since 2008. On this record, respondent continues to be substantially disabled and impaired for return to duty as a CHP officer. He continued to experience documented symptoms of PTSD even after initiating reinstatement in December 2009, and he remains in psychotherapy. Respondent's treatment records and numerous evaluations document public rage reactions, lack of emotional regulation, cynicism, defensiveness, and tendency to be overly-self favorable. Respondent was not forthright in his December 2010 Screening Questionnaire, indicating either a lack of insight, integrity, or both. (Factual Findings 36 & 37.) He also provided false information to Dr. Kennelly. (Factual Finding 75.)

Respondent's return to CHP duty would pose an unacceptable risk of relapse and an unacceptable risk of harm to the public and the CHP. (Factual Finding 79.) It is admirable that respondent wishes to return to work as a peace officer and that he is open to continued therapy, but his mental condition continues to preclude work in law enforcement at this time. (Gov. Code, § 1031.) For the reasons stated above, respondent is substantially disabled or incapacitated for the performance of his usual duties as a State Traffic Officer because of an ongoing psychological condition.

ORDER

Matthew Eisenman's Application for Reinstatement from Industrial Disability Retirement is DENIED. Matthew Eisenman continues to be substantially incapacitated for performance of the duties of a State Traffic Officer with the California Highway Patrol, based on a psychological condition.

DATED: September 14, 2015

DocuSigned by:
Dian M. Vorters
BB7DC02C5DB2422...

DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings