

**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:**

**CESAR G. URETA**

**and**

**CHUCKAWALLA VALLEY STATE PRISON, CALIFORNIA  
DEPARTMENT OF CORRECTIONS AND REHABILITATION,**

**Respondents.**

**Agency Case No. 2022-0658**

**OAH No. 2023010189**

**PROPOSED DECISION**

Administrative Law Judge, Michelle Dylan, State of California, Office of Administrative Hearings, heard this matter on March 30, 2023, by videoconference and telephone.

Attorney Nhung Dao represented the California Public Employees' Retirement System (CalPERS).

Attorney Stanley R. Apps represented respondent Cesar G. Ureta, who was not present. No appearance was made on behalf of respondent Chuckawalla Valley State Prison, California Department of Corrections and Rehabilitation.

The record was held open for submission of an amended statement of issues, respondent's expert's curriculum vitae, and briefing which was timely submitted. The amended statement of issues was marked for identification as Exhibit 14. Respondent's curriculum vitae was admitted as Exhibit H. Respondent's closing brief was marked for identification as Exhibit I. CalPERS's closing brief was marked for identification as Exhibit 15. Applicant's reply brief was marked for identification as Exhibit J. The record closed and the matter was submitted for decision on May 3, 2023.

## **FACTUAL FINDINGS**

### **Introduction and Procedural History**

1. Respondent Cesar G. Ureta (respondent) was employed as a psychologist by respondent Chuckawalla Valley State Prison, California Department of Corrections and Rehabilitation (CDCR). By virtue of his employment, respondent is a state safety member of CalPERS subject to Government Code section 21151. Respondent's last date of employment was May 31, 2016.

2. On November 7, 2020, respondent submitted an application for service pending industrial disability retirement, stating that his application was based on posttraumatic stress disorder (PTSD), and that he "cannot work with Prison/CDCR" and "cannot function to complete work assignments." Respondent retired for service effective November 1, 2020, and has been receiving his service retirement allowance since then.

3. Respondent's treating psychologist, Ling Chen Orgel, Ph.D., opined that as a result of his psychological condition of PTSD, respondent became substantially disabled from performing his usual job duties as a psychologist for CDCR on or prior to March 14, 2016, and that this disability is longstanding and chronic.

4. Respondent was evaluated by Alberto G. Lopez, M.D., M.P.H., at the request of CalPERS. Dr. Lopez opined that respondent became permanently substantially incapacitated from performing his usual job duties as a psychologist for CDCR on September 2, 2021, because of psychological conditions (unspecific anxiety disorder and depression), but not due to PTSD. Dr. Lopez also opined that respondent failed to establish continuous disability from the date he separated from employment (May 31, 2016) to the date he applied for retirement (November 7, 2020).

5. On February 28, 2022, CalPERS sent a letter to respondent, denying his application for industrial disability retirement. The letter stated that CalPERS had determined that respondent became unable to perform his job duties in December 2021, however he was required to establish that he was disabled at the date of discontinuance of service on March 31, 2016. Respondent timely appealed the denial by letter dated March 15, 2022 (misdated as March 21, 2021, in the letter). A statement of issues was issued by CalPERS on December 14, 2022, which stated that "the issue on appeal is limited to whether at the time of the application, on the basis of a psychological (PTSD) condition, respondent is substantially incapacitated from the performance of his usual and customary duties as a psychologist for CDCR." This hearing followed.

6. At hearing, CalPERS clarified that the relevant time period was "from the date respondent separated from employment to the time of the application," and sought to amend the statement of issues. Although respondent initially objected to

the amendment, respondent opted to proceed with the hearing rather than seek a continuance. CalPERS orally amended the time period at hearing, and the record was left open for submission of an amended statement of issues. An amended statement of issues was issued by CalPERS that day which stated that the issue on appeal is limited to whether respondent is substantially incapacitated from the performance of his usual and customary duties as a psychologist for CDCR from the date he separated from employment (noted as May 31, 2016, in CalPERS's closing brief) to the time of the application (noted as November 7, 2020, in CalPERS's closing brief), on the basis of a psychological (PTSD) condition.

## **Job Duties**

7. In his position as a Psychologist – Clinical, CF (9283) for CDCR, respondent's essential functions included providing indirect and direct psychological care and services to patients and other related work; working in any correctional institution regardless of level of security, acuity, or population gender including but not limited to inside housing units and clinical environments; being supervised or directed by an assigned manager or supervisor; functioning professionally under highly stressful circumstances, getting along well and interacting with co-workers and managers/supervisors; legibly and intelligibly documenting, preparing, reporting and maintaining clinical records of treatment of patients; working under pressure and under tight deadlines; observing and reporting contraband, such as weapons or illegal drugs; observing and reporting conduct of inmates to prevent self-injurious behavior, or behavior by inmates which has or is likely to lead to injury to other inmates or staff members; solving problems, reasoning, and making sound clinical judgments in patient assessment, diagnostic planning, and therapeutic planning; comprehending, retaining, integrating, synthesizing and applying information to meet departmental

demands; accepting appropriate suggestions and constructive criticism and if necessary, responding by behavior modification; ability to respond quickly and appropriately during an emergency situation; and tolerating exposure to extremely loud or chaotic environments.

8. The job duty statement for a clinical psychologist for CDCR describes the following essential duties: responsible for psychological assessment and treatment of inmates, including determining the inmate patients' diagnoses, treatment needs, and discharge plans; providing individual treatment; administering and interpreting psychological tests; and providing crisis intervention as needed.

### **Diagnostic Criteria for PTSD**

9. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), describes the modern criteria for diagnosis of PTSD. One of the diagnostic criteria for PTSD set forth in the DSM-5 is:

- A. Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways:
  - 1. Directly experiencing the traumatic event(s).
  - 2. Witnessing, in person, the event(s) as it occurred to others.
  - 3. Learning that the traumatic event(s) occurred to a close family member or close friend. In case of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental.

4. Experiencing repeated or extreme exposure to aversive details of the traumatic event(s) (e.g. first responders collecting human remains; police officers repeatedly exposed to details of child abuse.)

## **Work History and Psychological Conditions**

10. Respondent has a master's degree in public health and a doctoral degree (Psy.D.) in psychology, and he became a licensed psychologist in 2003. On November 1, 2007, respondent began working as a psychologist for CDCR. CalPERS reported in its closing brief that from 2007 through 2012, respondent worked at the Parole and Community Services Division; from 2012 through 2015, respondent worked at Ironwood State Prison; and from 2015 through 2016, respondent worked at Chuckawalla Valley State Prison.

11. Respondent has a long history of depression and anxiety. Respondent has been treated with medication since 1992; and was diagnosed with a learning disability in 1995. Respondent has been engaging in psychotherapy with Dr. Orgel since 2005.

12. In November 2008 (also noted as 2011 in Dr. Lopez's report), respondent's supervisor and friend pursued him sexually, and when he did not respond the supervisor reportedly committed suicide and named respondent in the suicide note. In 2014 (also noted as 2013 in Dr. Lopez's report), respondent's supervisor in another location reportedly died of suicide.

13. Dr. Orgel's treatment notes reflect that respondent suffers from anxiety, depression, and PTSD. Notes beginning in 2014 also indicate that respondent was struggling with work and job options. Dr. Orgel became concerned about respondent's

functioning and encouraged respondent to get a neuropsychological evaluation done. Respondent underwent testing and evaluation by Patricia Jane Weiss, Ph.D., in late 2014 and early 2015, which resulted in diagnoses including a specific learning disorder and PTSD.

14. A note on March 11, 2016, indicates that respondent was under a lot of stress at work, his anxiety had worsened, and his symptoms were worse, and that Dr. Orgel fully supported a three-month medical leave from work. A note from Dr. Orgel on March 14, 2016, indicates “[d]ecision to take a three month leave of absence from work.” The remaining notes on that day are partially illegible but appear to note a diagnosis of “PTSD.” A report dated March 14, 2016, by respondent’s physician, Gene Kim, M.D., indicates that respondent was being formally seen by a mental health provider (Dr. Orgel) who recommended that he take medical leave effective immediately for three months.

15. On March 18, 2016, respondent took a medical leave of absence from work due to claimed disabling conditions. On April 26, 2016, respondent filed an application for nonindustrial disability insurance (NDI) for claims concerning the lungs, headaches, and nervous system. Dr. Kim indicated on the NDI form that respondent was incapable of performing his regular work beginning March 11, 2016, and noted that he anticipated releasing respondent to return to his regular or customary work on June 11, 2016. Dr. Kim noted diagnoses of headaches and asthma.

16. A payroll specialist for CDCR indicated that the last day respondent physically worked at the prison was March 10, 2016. According to CalPERS, respondent resigned from CDCR on May 10, 2016; and his last day on paid status was May 31, 2016.

17. A progress note from Dr. Kim dated June 9, 2016, for a follow up of stress indicated that respondent reported that he "quit" his job formally on June 1, 2016.

18. Respondent never returned to work as a psychologist for CDCR, although he worked as a psychologist in the private sector.

19. Respondent worked for Borrego Health Facility from 2017 to April 2019. He left this position to work for Savas Health and Pain Management, where he worked from early 2019 to March 2020 doing pain psychology. Respondent left this position to work for the Desert AIDS Project in March 2020 where he worked until he resigned in October 2021. Respondent worked as a treating psychologist in all three of these positions. Respondent's duties at the Desert AIDS Project included completing comprehensive mental health assessments of clients, developing treatment plans, and providing psychotherapy to clients.

20. Dr. Orgel's treatment notes dating from 2016 through 2021 indicate that respondent had insomnia, trouble concentrating, and continued to experience difficulty and tension at work, and indecision about his career path. Noted diagnoses were depression, anxiety, and PTSD.

21. A note from Dr. Orgel on December 1, 2020, indicates that respondent discussed retiring from the prison system, and felt that working there had entailed "years of stress and trauma."

22. A note from Dr. Orgel dated October 26, 2021, indicates that respondent continued to report feelings of distress due to anxiety, fear, and depressed mood, and he described being hypervigilant, mildly paranoid, having difficulty concentrating and feeling unsafe, and having intrusive thoughts about his employment situation at CDCR.

Dr. Orgel noted that he continued to meet criteria for major depressive disorder, generalized anxiety disorder and PTSD.

23. As of February 4, 2022, respondent was working with ten patients in private practice doing telemedicine out of his home. Respondent felt that he could not do more than that and was having difficulty managing his schedule and even forgetting appointments.

### **TESTIMONY OF DR. ORGEL**

24. Dr. Orgel testified credibly and persuasively at hearing. Dr. Orgel has been working in the mental health field for 30 years. Dr. Orgel obtained her degree in clinical psychology from the California School of Professional Psychology in 1998. Dr. Orgel has been respondent's treating psychologist from June 16, 2005, until the present. Dr. Orgel testified that respondent's diagnoses include general anxiety disorder and PTSD. Dr. Orgel opined that respondent's mental health has been seriously impacted by the two work-related incidents referenced in Factual Finding 12. After the incident in November 2008, respondent was traumatized by his supervisor's death, upset that he was named in the suicide note, and worried about how it would affect how others treated him in the workplace. Respondent became very anxious, vigilant, and paranoid at work at that time, and Dr. Orgel diagnosed respondent with PTSD.

25. In 2014, respondent's supervisor in another location committed suicide. After the second incident, respondent's PTSD symptoms increased, and his condition became even more concerning. During 2014 and 2015, respondent was becoming more anxious at work, paranoid that his co-workers were talking about him, and unable to complete his notes. Dr. Orgel was concerned about respondent's functioning

and encouraged respondent to have a neuropsychological evaluation done by Dr. Weiss. Dr. Orgel noted in her testimony that Dr. Weiss confirmed her diagnosis of PTSD. Dr. Orgel opined that respondent's PTSD was caused by his work with CDCR, and that it escalated in 2014.

26. Dr. Orgel opined that respondent is substantially incapacitated from performance of the usual duties of the position of a psychologist in a prison environment. Dr. Orgel concluded that as a result of his psychological condition (PTSD), respondent "definitely" became substantially disabled such that he could not perform his job duties as a psychologist for CDCR on or prior to March 14, 2016. Dr. Orgel also opined that respondent's disability has been longstanding and is chronic, and that he is unable to perform work in a prison environment.

27. Dr. Orgel acknowledged that respondent had worked in several other psychologist positions after March 2016, but noted that those positions were not in prison settings. Dr. Orgel testified that respondent continues to have difficulty with employment. Respondent does not trust his supervisors and feels unsafe. His employment has been unstable with gaps in between positions. In 2019, respondent spoke about trying to apply for jobs in prisons, but Dr. Orgel does not believe that he could work in a prison environment. Dr. Orgel was concerned about respondent's judgment in even considering these jobs and opined that this was more of a wish on his part than an indication that he could perform the work. Respondent continues to have intrusive memories of the prior events at the prisons, has trouble concentrating, and gets anxious and paranoid which disrupts his sleep and affects his functioning.

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## **RESPONDENT'S ADDITIONAL EVIDENCE**

28. Respondent was seen by Dr. Weiss on November 16 and 17, 2014, December 27, 2014, and January 9, 2015, for testing for cognitive functioning, memory functioning, executive functioning and emotional functioning, and on January 31, 2015, for feedback, and Dr. Weiss drafted an undated neuropsychological report with her findings. Dr. Weiss noted that respondent was presently on stress leave due to the suicide of a colleague and death of his boss, and that he was looking for another job but plagued by PTSD symptoms and overwhelming guilt. Testing was administered, and Dr. Weiss opined that respondent met all six of the six criteria for PTSD according to the DSM-5 and met the criteria for a formal diagnosis of PTSD. Dr. Weiss noted that respondent experienced re-experiencing the traumas, having avoidance of triggers of the trauma, as well as arousal due to the triggers of the traumas. Severe symptoms and a severe level of impairment in functioning was also noted. In addition to the traumatic work incidents, incidents including car accidents, an assault at a bar, and an abusive relationship were noted in the report.

29. Dr. Weiss conducted a clinical interview with respondent on February 21, 2021, and provided a revised edition of her report on March 31, 2021. The report noted that respondent went on stress leave in 2016 due to factors including the suicide of a colleague, and the death of his boss. In addition, respondent felt that he had been put into dangerous situations involving inmates, and that he was unable to return to work in the prison system. Respondent was administered a measure of PTSD. Dr. Weiss again opined that respondent met all six of the six criteria for PTSD according to the DSM-5. Dr. Weiss provided an addendum dated October 24, 2021. In the addendum, Dr. Weiss noted that respondent's last report showed a strong profile of PTSD, from the Beck Anxiety Inventory, the Psychological Assessment Inventory, and

the Post Traumatic Stress Diagnostic Scale, in addition to the Rorschach Inkblot Test; and that on October 23, 2021, respondent reported reoccurring thoughts of hopelessness, fear, fatigue, recurring nightmares, extreme distress, flashbacks of events at CDCR, avoidance behaviors and problems with memory. Respondent reported that he had to leave his most recent job with the Desert AIDS Project, due to stressors and PTSD symptoms, including insomnia and heightened stress. Dr. Weiss's diagnoses included PTSD, chronic, ongoing.

30. CalPERS's physician report on disability dated September 2, 2021, which was completed by Dr. Kim, states that respondent is permanently substantially incapacitated from performance of the usual duties of the position with CDCR due to PTSD, and that he became unable to perform his job duties on May 10, 2016. The origin of the injury was noted "work related assault and harassment from inmates and work supervisor," (occurring on January 20, 2015) and it was noted that respondent must avoid triggers such as working in the prison system environment. Examination findings included increased anxiety triggering flashbacks, insomnia, and panic attacks.

### **Medical Evaluation and Opinion of Dr. Lopez**

31. Dr. Lopez performed an independent medical evaluation of respondent in connection with his industrial disability retirement application. Dr. Lopez obtained his master's degree in public health from University of California, School of Public Health, Berkeley in 1989, and graduated from Stanford University of Medicine in 1979. Dr. Lopez has been board-certified in adult psychiatry since 1986. Dr. Lopez has worked as a community psychiatrist for the City and County of San Francisco for over 30 years and has been doing disability evaluations part-time for approximately 30 years. Dr. Lopez has been conducting disability examinations for CalPERS for approximately seven or eight years.

32. Dr. Lopez testified at hearing and wrote a report dated February 4, 2022, after reviewing respondent's medical records and job description, taking respondent's history, administering psychological testing, and examining respondent. Dr. Lopez met with respondent for approximately one and one-half hours. Dr. Lopez noted that when respondent started working with CDCR, he worked at San Quentin Prison. After San Quentin, respondent worked for the CDCR parole division in San Francisco. Dr. Lopez noted that the chief psychologist respondent worked with, and who he considered to be a friend, committed suicide in 2011 (also noted as 2008 in other records). Respondent decided to leave that work setting and transferred to a facility in Blythe in Southern California. Respondent reported that the hours were extremely long, and that he found the work to be stressful. Respondent's supervisor reportedly treated him harshly, and respondent was given negative reviews which he disputed. Respondent believes that he was being retaliated against for having been associated with the prior suicide and getting "set up to be fired." The chief psychologist at the facility committed suicide in 2013 (also noted as 2014 in other records). In 2016, respondent resigned from his last position with CDCR. Respondent reported that he felt that the institution wanted him to resign and that he felt forced to leave.

33. Dr. Lopez noted that since the time of the first suicide, respondent has had difficulties with self-blame for what happened. Respondent reported continually thinking about the suicides and trauma and avoiding being near the prison or individuals who might remind him of what happened there. Respondent is vigilant and does not want to be around people he used to work with or with patients. At the time of Dr. Lopez's examination, respondent reported poor memory and concentration difficulties, mild daily depression, crying, diminished appetite and inactivity, social avoidance, anxiety, hypervigilance when he might run into those associated with his

former work, recollections of defending himself from harassment at work, intrusive memories, and poor sleep.

34. Respondent reported currently treating ten patients. Respondent applied for other positions, including one with a prison near Sacramento, but has unable to obtain them. Respondent believes that he has been "blackballed" by the correctional system.

35. Dr. Lopez administered psychological testing which included the Minnesota Multiphasic Personality Inventory-3, which is designed to assess major patterns of personality and emotional disturbances. Respondent endorsed a number of psychological problems including a high degree of stress. Testing suggested a somatoform disorder (an over-preoccupation with physical and medical problems) with psychotic symptoms including delusions and paranoia. Dr. Lopez opined that respondent may cling to delusional or transcendental beliefs and feels regretful and unhappy about life and plagued by anxiety and worry about the future.

36. After reviewing the records and performing the exam, Dr. Lopez diagnosed respondent with major depression, unspecified anxiety disorder, and a learning disorder. Dr. Lopez opined in his report that respondent has psychiatric conditions that arise to the level of substantial incapacity to perform his usual job duties, however Dr. Lopez believes that he does not have PTSD per se (which will be discussed further in Factual Finding 40.) Dr. Lopez opined in his report that respondent is permanently disabled and can no longer work in a prison environment because "he would not be able to perform psychological evaluations with inmates. He is too fearful to be at his former worksite. His anxiety is too high for that . . . and he would not be able to react appropriately to severe crises. He would not be able to respond to emergencies or crisis situations. He is too avoidant to do so."

37. Dr. Lopez also noted that respondent has been struggling with anxiety and depression for many years, has tried a number of different medications, has been in psychotherapy for years, has made repeated efforts to work in multiple locations and has not done well, can only see ten patients from home for his entire caseload, and has difficulties concentrating and forgets appointments.

38. Dr. Lopez opined that although respondent's difficulties had been present over many years contributing to his accelerating decline in performance, the substantial incapacity only manifested as of September 2, 2021. Dr. Lopez chose that date because Dr. Kim examined respondent on that date, and noted his examination findings in the CalPERS report of disability that he signed on that date.

39. In a supplemental report dated February 11, 2022 (erroneously dated February 11, 2021), Dr. Lopez also noted that although Dr. Kim stated the disability began on January 20, 2015, in the report, this could not be correct and must have begun later because respondent was working until March of 2016. At hearing, Dr. Lopez admitted that he had made an error in his review of the report, and that Dr. Kim had actually stated in the report that respondent's inability to perform his job duties began on May 10, 2016. However, Dr. Lopez testified that this fact did not change his opinion about the timing of the disability. Dr. Lopez's opinion in this regard was based on the following facts: that respondent told Dr. Kim in June 2016 that he quit his job; that respondent discussed retiring from the prison system with Dr. Orgel on December 1, 2020, which indicated to Dr. Lopez that it was respondent's preference to retire at that point, not that he was disabled; that respondent continued to work as a psychologist in other settings; that respondent applied for other jobs in the prison system; and that other than the CalPERS report of disability signed by Dr. Kim stating that respondent was disabled as of May 10, 2016, Dr. Lopez did not believe that he

saw any evidence in the medical record that respondent was substantially incapacitated from performing his job duties due to PTSD before September 2, 2021.

40. Furthermore, Dr. Lopez testified at hearing that respondent does not meet the criteria for PTSD. Dr. Lopez testified that PTSD is a mental health condition that is triggered by experiencing or witnessing a physical threat or sexual violence and encountering nightmares and flashbacks from the traumatic event. In his report dated February 4, 2022, Dr. Lopez opined, "I do not feel . . . that he has post-traumatic stress per se. He has not actually been threatened or directly exposed to trauma. There were traumatic incidents in his life, namely two suicides, but he did not witness these." At hearing, Dr. Lopez opined that in order to make a diagnosis of PTSD, the patient must be exposed to a direct threat to his life or physical well-being or sexual trauma or witness it happening to someone else. Dr. Lopez acknowledged that Dr. Weiss's report indicated a diagnosis of PTSD but testified that the PTSD diagnosis appeared to be based on the administration of a checklist to respondent, and that the report did not describe events witnessed by respondent that would meet the criteria of PTSD. Dr. Lopez also testified that although Dr. Kim indicated a PTSD diagnosis on the CalPERS report of disability, he did not indicate what the basis of it was, and that although there was reference to PTSD in Dr. Orgel's notes, the first mention of it that he noted was in April 2017.

## **Ultimate Factual Findings**

41. Dr. Orgel testified persuasively as to her medical opinion that respondent has been continuously substantially incapacitated for performance of his duties as a psychologist for CDCR due to PTSD since March 14, 2016, and as to the basis for her opinion. Dr. Orgel's opinion regarding respondent's disability and inability to work in a prison environment is consistent with respondent's medical records and job duties, the

CalPERS report of disability form Dr. Lee, and the reports from Dr. Weiss. Furthermore, Dr. Orgel treated respondent on numerous occasions for over 17 years and has significantly more knowledge of the events and respondent's psychological condition and limitations leading up to and during the relevant time period.

42. Dr. Lopez agrees that as of his examination of respondent on February 4, 2022, respondent is permanently disabled and can no longer work in a prison environment due to fear of his former worksites and an inability to perform psychological evaluations with inmates and respond to emergencies or crisis situations. Dr. Lopez's opinion that the disability did not arise until September 2, 2021, is less persuasive than Dr. Orgel's opinion because Dr. Lopez only met with respondent once in 2022, after the relevant time period, and he could not provide a plausible rationale for choosing the date that he did considering the evidence presented and the fact that respondent stopped physically working in a prison environment in March 2016. Furthermore, Dr. Lopez's opinion that respondent does not meet the criteria for a PTSD diagnosis because he did not witness the suicides conflicts with the DSM-5 diagnostic criteria. Specifically, Dr. Lopez failed to explain why respondent would not meet criterion (A), subdivision (3) or (4).

43. The medical evidence establishes that at the time of respondent's separation from state service on May 31, 2016, and continuously from that time until the date of the service application pending industrial disability application on November 7, 2020, respondent was substantially incapacitated for the performance of his usual and customary duties as a psychologist for CDCR, based on a psychological condition (PTSD).

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## LEGAL CONCLUSIONS

1. Pursuant to Government Code section 21151, subdivision (a), a state safety member who becomes incapacitated for the performance of his usual duties as the result of an industrial disability shall be retired for disability. The burden of proof is on the employee to establish that he is incapacitated, by a preponderance of the evidence. (*Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 691; *Rau v. Sacramento County Retirement Board* (1966) 247 Cal.App.2d 234, 238; *Lindsay v. County of San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 160-162; Evid. Code, § 115.)

2. The terms "disability" and "incapacitated for the performance of duty" mean "disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, . . . on the basis of competent medical opinion." (Gov. Code, § 20026.) An applicant is "incapacitated for performance of duty" if he is substantially unable to perform the usual duties of his position. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876; accord *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 859 860.) Mansperger was a warden with the Department of Fish and Game whose physician opined that he could no longer perform heavy lifting and carrying. The evidence established that such tasks occurred infrequently, and his customary activities were the supervision of hunting and fishing. The court found that Mansperger was not entitled to disability retirement. Although he had diminished arm strength, he could perform most of his usual job duties and substantially carry out his normal duties. In this case, CalPERS relies on Mansperger to argue that "incapacity" as used in Section 21151, has been defined as the substantial inability of the applicant to perform the usual and customary duties of the job, and CalPERS has determined that under this standard, a member is not

entitled to disability retirement if the member can substantially perform their "usual job duties."

3. CalPERS argues that respondent's condition did not preclude him from working as a psychologist in the private sector for five years following his separation from state service, and therefore he was substantially capable of performing the work of a psychologist until October 2021. In this case, respondent's position with CDCR required that he enter and function as a psychologist within a prison environment, not simply within the private sector. Unlike in *Mansperger*, the record contains no evidence that respondent would only have a remote chance or rare necessity of being required to enter the prison environment and perform psychological evaluations of persons in custody. Rather, these activities are the daily necessities of work as a prison psychologist. The evidence established that respondent has been unable to perform the usual and customary job duties of a psychologist for CDCR due to a psychological condition, PTSD, since March 14, 2016. (Factual Finding 43.)

4. Government Code section 21154 sets forth the requirements for submitting a timely application for disability retirement benefits: The application shall be made a) while the member is in state service, b) while the member for whom contributions will be made under Government Code section 20997, is absent on military service, c) within four months after his or her discontinuance of state service, 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 service to the time of application or motion. For eligibility, respondent must establish that he was incapacitated at the time he discontinued service on May 31, 2016, and he continued to be incapacitated from performing the usual duties of a psychologist for

CDCR until the time he applied for service pending industrial retirement on November 7, 2020.

5. Respondent has met his burden of establishing by a preponderance of the evidence that he was continuously substantially incapacitated for the performance of his usual duties as a psychologist for CDCR from May 31, 2016, through November 7, 2020. (Factual Finding 43.) Accordingly, his application must be granted.

### **ORDER**

The application of Cesar G. Ureta for industrial disability retirement is granted.

DATE: **05/18/2023**

*Michelle Dylan*

MICHELLE DYLAN

Administrative Law Judge

Office of Administrative Hearings