

**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:**

**AARON J. WILLIAMS and DEPARTMENT OF THE CALIFORNIA  
HIGHWAY PATROL, Respondents**

**Agency Case No. 2020-1116**

**OAH Case No. 2021020502**

**PROPOSED DECISION**

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on March 8 and October 23-24, 2023, by videoconference and telephone from Sacramento, California.

Helen Louie, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS) at hearing on March 8, 2023. After a substitution of counsel, Mehron Assadi, Staff Attorney, represented CalPERS at the continued hearing on October 23 and 24, 2023.

Stephen Cammack, Attorney at Law, represented respondent Aaron J. Williams (Mr. Williams), who was present at hearing.

There was no appearance by or on behalf of respondent Department of the California Highway Patrol (CHP). CHP was duly served with the Notices of Hearing in this matter. Consequently, the matter proceeded as a default hearing against CHP pursuant to Government Code section 11520, subdivision (a).

Evidence was received and the record left open until December 15, 2023 for submission of written closing briefs. The parties timely filed their closing briefs on December 15, 2023. CalPERS's closing brief was marked as Exhibit 22 and Mr. Williams's closing brief was marked as Exhibit L. Exhibits 22 and L were admitted as argument.

On December 15, 2023, CalPERS also filed a request for official notice, which was marked as Exhibit 23. On January 8, 2024, the record was briefly reopened until January 12, 2024, to allow Mr. Williams to file a response to the request for official notice. On January 12, 2024, Mr. Williams filed a response to the request for official notice, which was marked as Exhibit M. Exhibits 23 and M were admitted as argument. Mr. Williams does not oppose the request for official notice, which is granted.

On January 12, 2024, the record was closed and the matter resubmitted for decision.

## **ISSUE**

Was Mr. Williams substantially incapacitated from the performance of his usual and customary duties as a State Traffic Officer for CHP at the time of his application for industrial disability retirement (IDR) due to an orthopedic (right knee) condition?

## **FACTUAL FINDINGS**

### **Jurisdiction**

1. Mr. Williams was previously employed by CHP as a State Traffic Officer. By virtue of that employment, Mr. Williams is a state patrol member of CalPERS pursuant to Government Code section 20390.

2. On March 6, 2020, Mr. Williams submitted an IDR application to CalPERS. In the application, Mr. Williams claimed disability on the basis of an orthopedic (right knee) condition.

3. On August 10, 2020, CalPERS denied Mr. Williams's IDR application. The denial was based on CalPERS's determination that Mr. Williams was not substantially incapacitated from performing his usual and customary duties as a State Traffic Officer for CHP at the time he filed his application.

4. On September 8, 2020, Mr. Williams appealed CalPERS's denial of his IDR application. On January 29, 2021, Keith Riddle, in his official capacity as Chief of CalPERS's Disability and Survivor Benefits Division, signed and later filed the Statement of Issues for purposes of the appeal. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

### **The CHP State Traffic Officer Position**

5. CHP officers patrol state highways enforcing laws relating to the operation of motor vehicles; provide law enforcement services to state employees, officials, and the public and provide for the safekeeping of state property; provide for

the protection of the Governor, other constitutional officers, and members of the Legislature; or perform special staff assignments and other related work.

6. CHP has created a "California Highway Patrol Officer 14 Critical Physical Activities" form, which outlines 14 critical physical activities CHP officers must be able to perform along with representative job tasks. Those activities include the following:

- **Lift/Carry:** Lift and carry objects weighing 30 to 50 pounds without assistance and lift and carry an individual resisting arrest for 20 to 35 feet with assistance.
- **Push/Pull:** Pull/drag a non-resistive/incapacitated person (160 to 200 pounds) for five to 20 feet at an emergency situation or protest; pull/drag an individual (160 to 200 pounds) resisting arrest for five to 20 feet; separate uncooperative persons (160 to 200 pounds) by pushing, pulling, using locks, grips, or holds, and physically restrain or subdue a resistive individual using reasonable force; and pull/drag heavy objects off the roadway for five to 35 feet.
- **Sit:** Sit in a patrol car for an extended period of time during patrol or surveillance.
- **Stand:** Stand for extended periods of time at an accident/crime scene, during stakeout, surveillance, and crowd control, to provide security for various events, or to secure the perimeter.
- **Squat/Bend/Kneel:** Stoop/squat/kneel to look for physical evidence under a vehicle or furniture.

- Walk: Walk continuously while on foot patrol for special assignments and to conduct searches; walk around obstacles, over uneven ground, up hills/embankments, and in loose dirt, gravel, mud, ice, or snow.
- Run: Run five to 100 yards to get to an emergency or crime scene, assist other officers, or pursue a fleeing suspect.
- Climb: Climb over a guard rail or median barrier (two to three feet); climb over chain link or wooden fences (five to seven feet); climb over walls (four to seven feet); and climb steep embankments, hills, or gullies.
- Jump: Jump across and/or over obstacles (e.g. a guard rail) two to four feet; jump down from elevated surfaces four feet (e.g. a fence).

### **Mr. Williams's Work History, Injury, Treatment, and Symptoms**

7. Mr. Williams is presently 35 years old and married with three children ages eight, five, and two. He testified at hearing regarding his work history, right knee injury, subsequent treatment for that injury, and continuing symptoms.

8. In October 2008, Mr. Williams enrolled in the CHP Academy, from which he graduated first in his class academically and seventh overall. Mr. Williams first started working as a certified CHP officer in the Santa Cruz office in December 2009. In August 2014, he transferred to the Solano office, where he remained until the end of his CHP career.

9. In 2015, Mr. Williams applied for a position in CHP's motorcycle unit. Riding motorcycles was his passion, the motorcycle unit was deemed an "elite squad," and he was excited to be part of that "family." After passing a two-week course with testing and 240 hours of training with a certified motorcycle training officer, Mr.

Williams started working as a motorcycle officer sometime in 2016. He worked 10-hour shifts four days a week, plus overtime.

10. Mr. Williams's motorcycle weighed approximately 809 pounds. With gas and required added equipment, the motorcycle weighed approximately 950 pounds. An officer must hold the motorcycle up with their strength when stopped in traffic and when mounting or dismounting. CHP procedure requires an officer to mount or dismount the motorcycle on the right side, with the right leg used as the pivotal leg while swinging the left leg over the motorcycle. In a typical shift, Mr. Williams mounted and dismounted his motorcycle numerous times.

11. On May 25, 2017, Mr. Williams pursued and apprehended a suspect on foot. Two to three days later, his right knee was tight, painful, and "not moving right." Over time, the pain became progressively worse. Mr. Williams believed it might have been a repetitive injury from mounting and dismounting his motorcycle.

12. Following his injury, Mr. Williams filed a workers' compensation claim and sought treatment from orthopedic surgeon Michael Michlitsch, M.D. Dr. Michlitsch attempted various treatment modalities including physical therapy and home exercises, a cortisone injection, chiropractic treatment, and arthroscopic knee surgery on January 3, 2018. Mr. Williams initially showed some improvement following surgery, but then his pain returned. By June 2018, he had trouble walking and could not stand for long periods of time. However, X-rays and MRIs revealed generally unremarkable findings.

13. Dr. Michlitsch ultimately determined there were no further treatment options to pursue, found that Mr. Williams had reached maximum medical improvement, and limited him to performing sedentary work for five days a week. CHP

approved Mr. Williams to work a limited duty assignment consistent with Dr. Michlitsch's restrictions starting October 12, 2020.

14. In the course of the workers' compensation case, several other orthopedic specialists evaluated Mr. Williams. On April 11, 2019, Mr. Williams was examined by Qualified Medical Evaluator (QME) Dave Miles Atkin, M.D. Dr. Atkin found right knee tenderness, reduced right quadriceps strength; reduced right knee flexion, reduced right thigh girth compared to the left;<sup>1</sup> and crepitus, inhibition, and apprehension of the right knee. Mr. Williams also had an antalgic gait on the right side. Dr. Atkin diagnosed Mr. Williams with right knee patellar maltracking. He recommended that Mr. Williams be evaluated by patellofemoral specialist Lesley Anderson, M.D.

15. On June 4, 2019, Mr. Williams was examined by Dr. Anderson. Dr. Anderson found right knee tenderness, poor quadriceps control when bending the right knee, and two centimeters of right quadriceps atrophy, which could "certainly affect" Mr. Williams's ability to climb stairs and contribute to his pain syndrome. Dr. Anderson recommended dynamic taping, more specialized imaging, more activity and exercise, and cognitive behavioral therapy to help Mr. Williams manage his pain condition.

16. On January 30, 2020, Dr. Atkin reexamined Mr. Williams. Mr. Williams had a mildly antalgic gait on the right, right knee pain with partial squatting, right knee

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<sup>1</sup> Dr. Atkin's report indicated reduced thigh girth on the left compared to the right, but he clarified at hearing that he inadvertently and erroneously switched the measurements when preparing the report.

crepitus, decreased right knee flexion, right thigh atrophy, and right quadriceps weakness.

17. On October 21, 2021, Mr. Williams was examined by Agreed Medical Evaluator (AME) Steven S. Isono, M.D. Dr. Isono found mild crepitus in the right knee, reduced right quadriceps strength, and reduced thigh/calf circumferences on the right compared to the left. Dr. Isono diagnosed right knee medial plica syndrome and patellar maltracking. He noted that Mr. Williams had chronic dysfunction of the right knee and agreed with Dr. Michlitsch's finding that Mr. Williams had reached maximum medical improvement.

18. On October 12, 2022, CHP notified Mr. Williams that it could no longer accommodate his work restrictions and cancelled his limited duty assignment. Mr. Williams has not worked at CHP since.

19. In early 2023, Mr. Williams pursued treatment with Dr. Atkin, the former QME for his workers' compensation case. Dr. Atkin examined Mr. Williams on March 14, 2023. Dr. Atkin found right knee tenderness and crepitus. Testing of the right knee was positive for apprehension and patellar maltracking. Dr. Atkin prescribed opioid medication, physical therapy, and a home exercise regimen.

20. Mr. Williams continues to experience daily right knee pain and stiffness that get worse with activities such as prolonged walking or standing. He cannot run. He even has some discomfort sitting with his right leg at a 90-degree angle. Sometimes the pain wakes him up at night. Symptoms improve with heat, rest, ibuprofen, and Tylenol. He tries to avoid taking prescription opioid medications for an extended period of time.

21. Courtney Williams, Mr. Williams's spouse, testified at hearing and confirmed that Mr. Williams's right knee condition has significantly reduced his ability to perform daily activities. Although he still tries to assist with household chores, he can only do so for short periods of time before he must rest and take the pressure off his knee. He no longer plays soccer with his eight-year-old daughter. Whereas he previously walked her to school a couple blocks away every morning, he now must drive her.

22. Mr. Williams is frustrated by his medical condition. He was never interested in disability retirement. He pursued medical treatment for his right knee condition because he is still young and wanted to "get things fixed and get back to work" at CHP. Being a CHP motorcycle officer was his "dream job," and he loved serving the public. Nevertheless, despite seeing numerous doctors, never missing a physical therapy appointment, and following all recommended treatment, Mr. Williams's right knee condition did not materially improve.

23. Loss of Mr. Williams's job at CHP has also been a significant financial hardship for his family. He has since worked two sedentary jobs compatible with his work restrictions. In October 2022, he started working as an office assistant for a construction company at less than 50 percent of his CHP salary. In April 2023, he was laid off when the company experienced financial trouble. Since approximately June 2023, Mr. Williams has been working for Northern California Electrical Construction Industry (NCECI). In his position at NCECI, he monitors payroll for public works jobs. He still earns approximately \$40,000 less annually than he did at CHP.

## **Video Surveillance**

24. The record contains voluminous video clips of surveillance conducted by CHP and CalPERS. Several, but not all, of the videos show Mr. Williams walking with a limp or gait disturbance. In a July 26, 2019 video, Mr. Williams is seen helping a friend unload items from the back of a pickup truck at a waste management facility. At one point, he is bent at the knees. However, he subsequently cautiously steps down onto the ground from the tailgate of the pickup truck.

## **Medical Expert Opinions**

### **ANTHONY FRANCIS BELLOMO, M.D.**

25. CalPERS requested Anthony Francis Bellomo, M.D., to perform an Independent Medical Evaluation (IME) of Mr. Williams. Dr. Bellomo has been a California-licensed physician since 1994 and is a board-certified orthopedic surgeon. Until recently, he had an active practice treating patients for various orthopedic conditions, including knee impairments. He has also been performing IMEs for CalPERS since 2008.

26. Dr. Bellomo examined Mr. Williams on July 28, 2020. He also reviewed Mr. Williams's medical records, the surveillance videos, and the CHP officer work requirements. He prepared an initial and supplemental reports concerning his evaluation of Mr. Williams and testified consistently with those reports at hearing.

27. Dr. Bellomo diagnosed Mr. Williams with chronic right knee pain status post arthroscopy but opined that he was not substantially incapacitated from performing his usual job duties. Dr. Bellomo found Mr. Williams cooperative and did not detect any signs of malingering on the physical examination. However, Dr. Bellomo

reasoned that the examination revealed full range of motion of the right knee without significant crepitus or any quadriceps atrophy. Although Mr. Williams had subjective complaints of tenderness and a mild right antalgic gait, Dr. Bellomo noted this was not seen in the surveillance videos. Those videos also showed that Mr. Williams was able to bend his knees. Finally, Dr. Bellomo observed that the type of knee pain Mr. Williams experiences is often the result of a muscle imbalance, which can be effectively treated through physical therapy.

**DAVE MILES ATKIN, M.D.**

28. Dr. Atkin testified at hearing on Mr. Williams's behalf. Dr. Atkin has been a California-licensed physician since 1989 and is a board-certified orthopedic surgeon. He maintains a full-time practice treating medical and surgical orthopedic patients in San Francisco. Additionally, he serves as a QME and performs consulting work for medical malpractice cases (53 percent for plaintiffs, 47 percent for defendants).

29. Dr. Atkin disagrees with Dr. Bellomo's opinion that Mr. Williams is not substantially incapacitated. Dr. Atkin explained that he had the opportunity to examine Mr. Williams on three occasions, twice as a QME in 2019 and 2020, and then as his treating physician in 2023. The examinations were largely consistent and revealed objective findings such as an antalgic gait, crepitus, reduced range of motion, quadriceps weakness, and atrophy associated with right knee dysfunction, in addition to subjective complaints of pain. Dr. Atkin believes that the most appropriate diagnosis is patellar maltracking, which he was able to confirm through a visual examination and a positive apprehension test. This type of impairment often cannot be visualized on X-rays or MRIs.

30. Dr. Atkin also reviewed the video surveillance of Mr. Williams, which did not change his opinion. He observed that many of the videos show Mr. Williams walking with a limp or gait disturbance. Because musculoskeletal pain can wax and wane, it is unsurprising that an antalgic gait is not always present. Moreover, Dr. Atkin observed that the video surveillance did not show any repetitive squatting or kneeling, nor did it show any running or climbing.

31. Dr. Atkin opined that Mr. Williams is unable to perform several of the 14 critical physical activities required of CHP officers due to his right knee condition. Specifically, he is unable to fulfill the lifting/carrying, pushing/pulling, squatting/bending/kneeling, walking, running, climbing, and jumping requirements as outlined in the "California Highway Patrol Officer 14 Critical Physical Activities" form. He could probably perform the sitting and standing requirements, but with pain.

## **LEGAL CONCLUSIONS**

1. As the applicant, Mr. Williams bears the burden of proving by a preponderance of the evidence that he is entitled to IDR benefits. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051; Evid. Code, § 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."].) A preponderance of the evidence means "evidence that has more convincing force than that opposed to it." (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

2. "Any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, regardless of

age or amount of service." (Gov. Code, § 21151, subd. (a).) "'Disability' and 'incapacity for performance of duty' as a basis of retirement, mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion." (Gov. Code, § 20026.)

3. Courts have interpreted the phrase "incapacitated for the performance of duty" to mean "the substantial inability of the applicant to perform [his] usual duties." (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 877.) CHP officers' usual duties include all the activities identified in the "California Highway Patrol Officer 14 Critical Physical Activities" form. (Veh. Code, § 2268; *Beckley v. Board of Administration* (2013) 222 Cal.App.4th 691, 699-700.) Mere discomfort, which may make it difficult for one to perform their duties, is insufficient to establish incapacity. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207.)

4. When the record as a whole is considered, Dr. Atkin's opinion is more persuasive. He examined Mr. Williams on three occasions over several years, allowing him to obtain a longitudinal picture of Mr. Williams's right knee condition. His opinion is supported by several objective findings, including reduced range of motion, weakness, and atrophy. His opinion is also more consistent with the opinions of other providers who evaluated Mr. Williams. Notably, treating physician Dr. Michlitsch ultimately limited Mr. Williams to sedentary work, Dr. Anderson found significant atrophy on her examination, and Dr. Isono found reduced quadriceps strength and thigh/calf circumferences on the right compared to the left.

5. To be sure, Dr. Bellomo's examination rendered more benign findings than those of other physicians, and he reasonably based his opinion on his own

findings. However, he only examined Mr. Williams on one occasion and conceded that there were no signs of malingering. Furthermore, Dr. Bellomo appeared to base his opinion at least in part on an inaccurate interpretation of the video surveillance. For example, he erroneously states that Mr. Williams's antalgic gait was not seen in the surveillance videos; it is plainly visible in several videos. Additionally, Dr. Bellomo emphasizes that the video surveillance shows that Mr. Williams is able to bend his knees. But even though Mr. Williams bent his knees at one point while at the waste management facility, there is no depiction of extensive or repetitive knee bending, squatting, or kneeling.

6. Dr. Atkin's findings are also consistent with the credible testimony of Mr. Williams and his wife regarding his right knee condition. It is evident Mr. Williams loved his career as a CHP officer and has made great efforts to obtain appropriate treatment that would allow him to return to it. Unfortunately, that was not possible.

7. When Dr. Atkin's opinion is credited, Mr. Williams is unable to perform several of the 14 critical physical activities required of a CHP officer. Setting aside those that Mr. Williams could perform with pain or discomfort, he is unable to perform the lifting/carrying, pushing/pulling, squatting/bending/kneeling, walking, running, climbing, and jumping requirements.

8. In sum, when all the evidence is considered, Mr. Williams demonstrated that it is more likely than not that he was substantially incapacitated from the performance of his usual and customary duties when he filed his IDR application. Thus, his appeal must be granted.

## ORDER

1. Respondent Aaron J. Williams's appeal is GRANTED.
2. Respondent Aaron J. Williams was substantially incapacitated from the performance of his usual and customary duties as a State Traffic Officer for CHP at the time of his application for industrial disability retirement due to an orthopedic (right knee) condition.
3. Any dispute as to whether the disability is industrial or nonindustrial will be resolved pursuant to Government Code section 21166.

DATE: January 22, 2024

*Wim van Rooyen*

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings