

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:**

**NORMA A. CARRILLO, and CENTRAL CALIFORNIA WOMEN'S
FACILITY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND
REHABILITATION,**

Respondents

Agency Case No. 2023-0303

OAH No. 2023090155

PROPOSED DECISION

Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 29, 2024, from Sacramento.

Mehron Assadi, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Norma A. Carrillo (respondent) appeared and represented herself.

There was no appearance by or on behalf of Central California Women’s Facility, California Department of Corrections and Rehabilitation (CDCR). CalPERS established that it duly served CDCR with a Notice of Hearing. Consequently, this matter proceeded as a default hearing against CDCR pursuant to Government Code section 11520, subdivision (a).

Evidence was received and the hearing concluded. The record was held open for the parties to submit written closing arguments, which were timely submitted. The record was closed and the matter submitted for decision on May 3, 2024.

ISSUE

At the time of her application, was respondent substantially incapacitated from performing her usual and customary duties as a Correctional Sergeant for CDCR based on orthopedic conditions (left shoulder injury with surgery and right shoulder tear)?

FACTUAL FINDINGS

1. Respondent was employed by CDCR as a Correctional Sergeant. By virtue of her employment, respondent is a state safety member of CalPERS subject to Government Code section 21151.

Application by Respondent

2. On September 14, 2022, respondent filed her Application for Service Pending Industrial Disability Retirement (Application). In her Application, respondent described her disability as “left shoulder injury with surgery, right shoulder tear.” She stated her injury to her left shoulder occurred on August 6, 2021, while “baton

training” and to her right shoulder on December 27, 2021, while lifting a box over her head while on duty. Respondent stated in her Application that her injuries resulted in limitations/preclusions including “no lifting, pulling [or] pushing more than 5 lbs.”

Essential Functions of a Correctional Sergeant

3. The CDCR list of essential functions for a Correctional Sergeant pertinent to an employee’s shoulder strength and function include the ability to do the following: swing a baton with force to strike an inmate; disarm, subdue and apply restraints to an inmate; defend self and/or others against inmate; climb stairs while carrying items; climb ladders and climb onto bunk beds; lift and carry items weighing from 20 to over 100 pounds; lift, carry, drag, and physically restrain an inmate; and push and pull while opening and closing locked gates and cell doors, which may occur during an altercation with or restraint of an inmate.

Respondent’s Evidence

4. Respondent testified that she injured her left shoulder through repetitive use swinging her baton during training at work, and injured her right shoulder lifting a box over her head in the control booth while at work. Because of her shoulder injuries, she does not believe she would be able to perform all the essential functions of a Correctional Sergeant.

5. Respondent took service retirement at the age of 50, as she had planned to do, while she was out on worker’s compensation leave due to her shoulder injuries. Because she was planning to retire, she did not have a return-to-work consultation regarding her worker’s compensation leave.

6. Respondent introduced in evidence an Agreed Medical Evaluation (AME) report dated February 10, 2023, prepared by Michael Klassen, M.D., who examined respondent on the same date. Dr. Klassen is an orthopedic surgeon licensed in California and is a Diplomate of the American Board of Orthopaedic Surgery, a Fellow of the American Academy of Orthopaedic Surgeons, Board Certified in Sports Medicine, and a Diplomate of the National Board of Medical Examiners.

7. Dr. Klassen reviewed respondent's medical history and physically examined her. He noted respondent injured her left shoulder on August 6, 2021, during annual baton training, and injured her right shoulder on December 27, 2021, while lifting a box over her head while at work in the central control area. After a period of conservative treatment, respondent underwent arthroscopic surgery to repair the rotator cuff in her left shoulder on March 17, 2022, and her right shoulder on October 20, 2022. On examination, respondent's shoulders were nearly normal, with normal range of motion. Dr. Klassen diagnosed respondent with bilateral shoulder pain post rotator cuff surgery. He opined that respondent has 10 percent upper extremity impairment of both her left and right shoulders. Dr. Klassen recommended work restrictions, as follows: "No overhead activity. No pushing, pulling or carrying more than 25 pounds occasionally, 10 pounds frequently."

CalPERS's Evidence – Expert Opinion

8. CalPERS retained Michael Quacinella, D.O., M.P.H., to conduct an Independent Medical Evaluation (IME) of respondent. Dr. Quacinella is an orthopedic surgeon and is a Diplomate of the American Board of Orthopaedic Surgery. He is licensed to practice medicine in California and is currently completing a fellowship in orthopedic trauma surgery at Vanderbilt University School of Medicine. Dr. Quacinella conducted an IME on January 27, 2023, and issued an IME report on that date. He also

prepared a supplemental report on March 17, 2023, specifically to review and address additional medical records and the report prepared by Dr. Klassen dated February 10, 2023.

9. Dr. Quacinella testified at hearing regarding his findings. On January 27, 2023, he met with respondent and took her personal history, present complaints, past surgical history, current medications, social history, review of systems, and physically examined her. During the examination, respondent had full shoulder strength with some limitations in her flexibility. Based on his examination of respondent, Dr. Quacinella opined that respondent's shoulders are structurally sound.

10. Dr. Quacinella does not disagree with Dr. Klassen's clinical findings and impairment ratings. However, the purpose of a worker's compensation AME is to determine whether there is some level of impairment. This is substantially different than the purpose of an IME, which is to determine whether the employee is substantially incapacitated from performing her duties. Based on his examination of respondent and review of the records provided, Dr. Quacinella opined that she is not substantially incapacitated from performing any of the essential functions of a Correctional Sergeant, even though some of the essential functions such as lifting might cause pain.

Analysis

11. CalPERS presented competent medical evidence through the testimony and IME report of Dr. Quacinella, who found that respondent is not substantially incapacitated from performing the duties of a Correctional Sergeant. His opinion was persuasive.

12. Respondent presented competent medical evidence through Dr. Klassen's AME report that respondent has 10 percent impairment of each shoulder, for purposes of workers' compensation. However, as Dr. Quacinella persuasively explained, measuring impairment for purposes of workers' compensation is different from determining whether an employee is substantially incapacitated from performing the duties of a particular job. Also, it is not clear from Dr. Klassen's AME report whether he recommends work restrictions because respondent experiences pain when doing the restricted activities, because of incapacity, or for some other reason. In sum, Dr. Quacinella's IME report and testimony were more persuasive on the issue of substantial incapacity than respondent's evidence. Because respondent failed to offer persuasive competent medical evidence to establish that, at the time she applied for disability retirement, she was substantially and permanently incapacitated from performing the usual duties of a Correctional Sergeant, her application must be denied.

LEGAL CONCLUSIONS

1. To qualify for disability retirement, respondent had to prove that, at the time she applied for disability retirement, she was "incapacitated physically or mentally for the performance of his or her duties . . ." (Gov. Code, § 21156.) As defined in Government Code section 20026,

"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 . . . on the basis of competent medical opinion.

2. In *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876, the court interpreted the term "incapacity for performance of duty" as used in Government Code section 20026 (formerly section 21022) to mean "the *substantial* inability of the applicant to perform his usual duties." (Italics in original.) An applicant for disability retirement must submit competent, objective medical evidence to establish that, at the time of the application, she was permanently disabled or incapacitated from performing the usual duties of her position. (*Harmon v. Bod. of Retirement* (1976) 62 Cal.App.3d 689, 697.)

3. *Mansperger* and *Harmon* are controlling in this case. The burden was on respondent to present competent medical evidence to show that, as of the date she applied for disability retirement, she was substantially unable to perform the usual duties of a Correctional Sergeant due to an orthopedic condition. Based on the evidence as a whole, respondent failed to meet this burden. For this reason, respondent's disability retirement application must be denied.

ORDER

The application for disability retirement filed by respondent Norma A. Carrillo is DENIED.

DATE: May 28, 2024

Timothy Aspinwall

TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings