

**BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA**

In the Matter of the Application for Disability Retirement of:

NATALIE M. CUNNINGHAM, Respondent,

and

COUNTY OF RIVERSIDE, Respondent

Agency Case No. 2024-0303

OAH No. 2024080810

PROPOSED DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 18, 2024, by videoconference.

Mehron Assadi, Staff Attorney, California Public Employees' Retirement System (CalPERS), represented complainant, Sharon Hobbs, Chief, Disability and Survivor Benefits Division.

Natalie M. Cunningham, respondent, represented herself.

There was no appearance by the County of Riverside (County), despite the Notice of Hearing being properly served. This matter proceeded as a default against the County under Government Code section 11520, subdivision (a).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 18, 2024.

SUMMARY

Ms. Cunningham sought disability retirement due to psychological injuries she suffered during her employment as a Sheriff's Community Service Officer. The competent medical evidence in this case did not show that Ms. Cunningham is substantially disabled from performing the duties of her job. Therefore, her disability retirement application must be denied.

FACTUAL FINDINGS

Jurisdictional Matters

1. Ms. Cunningham is a local miscellaneous member of CalPERS by virtue of her employment with the County. On April 13, 2023, the County submitted an application for disability retirement on behalf of Ms. Cunningham. On September 14, 2023, Ms. Cunningham also submitted an application for disability retirement.

2. After a review of medical reports from competent medical professionals, CalPERS determined that Ms. Cunningham was not permanently disabled or incapacitated from the performance of her duties. CalPERS therefore denied the application for disability retirement.

3. Ms. Cunningham filed a timely appeal on March 20, 2024. This hearing followed.

4. The County did not file a notice of defense. The County was in default in this case.

Respondent's Work for the County

5. Ms. Cunningham began working for the County as a Sheriff Service Officer in the Palm Desert Station in October 2003. She transferred to the SWAT team in Banning as a Sheriff Service Officer in 2007. In 2020, she transferred to the Palm Desert Station. On an unknown date, her position changed to Community Services Officer. At the time of her disability retirement application, she held the position of Community Services Officer II (CSO II). According to the duty statement, a CSO II receives, categorizes, and stores evidence; enters evidence in the tracking system; retrieves evidence for law enforcement, prosecution, and defense personnel; ensures evidence security and chain of custody; transports arrestees and detainees to jail, hospital, mental health facility, or other holding locations; drives a marked vehicle to perform home, business, and area checks; detects violations of laws, ordinances, and regulations; watches for suspicious behaviors, disabled vehicles, hazards, vandalism, and traffic accidents; responds to requests for assistance from the public; issues warnings or citations for code, regulation, or ordinance violation; interviews victims and witnesses; writes reports, collects and preserves evidence, dusts and lifts fingerprints; and investigates traffic accidents by obtaining statements, diagramming the scene, writing reports, and assisting sworn officers by directing traffic, setting up flares; and other support functions.

6. Ms. Cunningham last worked for the County in the end of June 2022. Workers' compensation case records show that she claimed cumulative trauma from January 2019 to June 27, 2022. On June 8, 2023, the Riverside County Sheriff's Office issued a Notice of Release from Employment in which it notified Ms. Cunningham that it determined she could not perform the essential functions of her position, either with or without accommodation.

Thomas Pyo, M.D., Qualified Medical Examination

7. On February 23, 2024, at CalPERS's request, Thomas Pyo, M.D., performed a qualified medical examination of Ms. Cunningham. Dr. Pyo received a Bachelor of Science degree in computer engineering from the University of Maryland, College Park in 2004, and a doctorate in allopathic medicine from Texas Tech University Paul L. Foster School of Medicine in 2013. After residency in psychiatry at the University of California, Olive View Psychiatry Residency Program, he graduated in 2021. He is licensed to practice medicine in California and has been certified by the American Board of Psychiatry and Neurology since 2021. He currently works for the Los Angeles County Department of Mental Health as a street medicine psychiatrist. Dr. Pyo was qualified to testify as an expert in this case.

8. Dr. Pyo reviewed medical records, interviewed and took a medical history from Ms. Cunningham, and administered several standardized psychological tests. At the exam, Ms. Cunningham reported anxiety, depression, problems sleeping, and irritability as a result of discrimination she experienced at work.

9. Dr. Pyo administered the Beck Anxiety Inventory, a self-report inventory, which showed severe anxiety. The Beck Depression Inventory showed moderate depression. The Hamilton Psychiatric Rating Scale for Anxiety, which is part self-

reported and part examiner scored, showed mild anxiety. The Hamilton Psychiatric Rating Scale for Depression showed moderate depression.

10. Dr. Pyo noted that Ms. Cunningham denied symptoms of post-traumatic stress disorder. Her main obstacle to working at her job with the County stemmed from irritability she feels towards the coworkers she believed treated her unfairly; she expressed concern that she may “snap” at work and not be in control of what she might do or say.

11. Dr. Pyo testified that Ms. Cunningham was cooperative with his exam. His examination revealed that Ms. Cunningham was experiencing generalized anxiety, depression, and irritability. Her depressive symptoms did not meet the clinical criteria for a major depressive disorder. He diagnosed generalized anxiety disorder and adjustment disorder with anxiety. Her symptoms were attitudinal. He did not find that she had a psychiatric incapacity to work. Her irritability was a result of interpersonal relationships at work. She was clearly uncomfortable returning to work, but she was not incapable of doing so due to a psychiatric condition. He also testified that he did not find her condition to be permanent. She reported that she saw a therapist for only six visits. He believed that therapy could help her anxiety and irritability and improve her work experience if she would participate in therapy.

Report of Emily B. Fine, Ph.D.

12. Respondent offered a report by Emily B. Fine, Ph.D., in support of her claim for disability retirement. The report stated that Dr. Fine is a licensed clinical psychologist, clinical neuropsychologist, and qualified medical examiner, who evaluated Ms. Cunningham on May 2, 2023, as part of her treatment in the workers' compensation system. Dr. Fine did not testify at the hearing. The report was issued as

part of respondent's workers' compensation case. It did not detail respondent's diagnosis, symptoms, or the psychiatric condition that led to her claimed disability in the workers' compensation system. Dr. Fine apportioned respondent's psychological symptoms to certain "events of employment." In total, Dr. Fine found that five specific events in the workplace each received 10 percent apportionment, for a total of 50 percent. She gave a certain memorandum sent to respondent 1 percent apportionment, for a total of 51 percent. The report stated:

The events of employment and associated percent causation of her psychological symptoms are as follows: 1) Captain Bennett would not look at her or her partner (also female) but would say hello to the other deputy with them (10%). 2) Ms. Cunningham was on call 24 hours per day, but she stopped receiving calls, despite finding out the team was indeed being utilized (10%). 3) Then, other job duties during the day were taken away, including filling the vehicles with gas, taking inventory, and caring for the weapons, which she had been doing since she started working there. As a result, she was simply sitting in the office or dealing with car repairs (10%). 4) In 2020, Lieutenant Koehler informed them that pay was being eliminated for on-call work and given to the K-9 unit. He reportedly smiled at her when he delivered this news (10%). 5) After transferring, she saw people from her old department getting promoted. She tried to speak to the Sheriff, but "it was an all-in boys' club." (10%) I believe these events each contributed equally to her psychological

symptoms, based on her description of the events, her affect when detailing them, and her discussion of the impact on her mental health. I do not believe her receipt of a memorandum of counsel contributed as significantly to her psychological symptoms, as receiving this memorandum was more a result of her psychological symptoms, rather than vice-versa, and only contributed 1%.

Ms. Cunningham's Testimony

13. Ms. Cunningham testified that she had a "wonderful career" with the Sheriff's Department. As a female, she struggled in the department because she worked mostly with men. She testified she worked well within the department for 18-plus years, until she had a problem with a certain sergeant. When a new sheriff came in, he had favorites, and one was the sergeant with whom respondent had clashed. She testified she was "100% devoted" to the job. She received overtime and on-call pay and felt she made decent money and was rewarded for her devotion. That all changed within a six-month period in 2020 when the department took away on-call and overtime pay for her. She testified she lost \$30,000 to \$40,000 per year because of the cuts. She testified that the lieutenant who informed her of the pay cuts did so "with a smile." The captain and sergeant would not even acknowledge her when she was in their presence. They would look right past her and make eye contact with the men in the room.

14. Ms. Cunningham testified that she tried to transfer to another station. She loved working there, but her internal anger and disappointment was "boiling," even when taking medication. Before working for the County, Ms. Cunningham worked as a veterinary assistant and an animal control officer.

15. Ms. Cunningham tried a few sessions of therapy but did not continue because she did not find them helpful.

16. Ms. Cunningham testified that her feelings of betrayal, her internal anger, and being upset over how she was treated make it hard for her to function in the normal world anymore. She wants nothing to do with law enforcement of any kind or any work for the County. She testified, "it will haunt me" if she goes to work for another law enforcement agency. She received a payout from workers' compensation and believes she is permanently disabled from performing the duties of her job with the County.

17. Ms. Cunningham is attending school to become an esthetician and is trying to become a better person. She struggles to go to school every day because of her anger.

LEGAL CONCLUSIONS

1. CalPERS is charged with administering the disability retirement system. It must do so according to the Public Employees' Retirement Law, Government Code sections 20000 through 21716.

2. A patrol, safety, industrial, peace officer, firefighter, or local safety member who is incapacitated for the performance of duty as the result of an industrial disability may be retired for disability. (Gov. Code § 21151, subd. (a).)

3. Government Code section 20026 provides:

"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.

4. Ms. Cunningham has the burden of proving she is eligible for disability benefits by a preponderance of the evidence. (*Glover v. Bd. of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

5. Incapacity for the performance of duty "means the substantial inability of the applicant to perform his usual duties." (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876.) Substantial inability to perform usual duties must be measured by considering a member's abilities. Discomfort, which makes it difficult to perform, is insufficient to establish permanent incapacity. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207, citing *Hosford v. Bd. of Admin. of the Public Employees' Retirement System* (1978) 77 Cal.App.3d 854, 862.) A condition or injury that may increase the likelihood of further injury or a fear of future injury does not establish a present substantial inability to perform one's job. (*Hosford, supra*, 77 Cal.App.3d at pp. 863-864.)

6. Receipt of any type of disability in a related workers' compensation proceeding does not establish qualification for a disability retirement. (*Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689; *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854.) Nor does the issuance of prophylactic work restrictions or a reasonable fear of injury justify granting an industrial disability retirement. (*Hosford, supra*, at p. 863-864.) Workers' compensation appeal board determinations do not apply to industrial disability retirement proceedings. (*English v. Board of*

Administration of the Los Angeles City Employees' Retirement System (1983) 148 Cal. App. 3d 839, 844-845; *Hawpe v. City of Napa* (2004) 120 Cal.App.4th 194, 207.)

Evaluation

7. Dr. Fine's report issued in the workers' compensation process did not establish a substantial inability to perform the usual and customary duties of a CSO II with the County of Riverside. The report only apportioned work-related injuries based on certain incidents at work, and did not detail respondent's diagnosis, symptoms or the psychiatric condition that led to her claimed disability. Dr. Fine also did not address the legal standard of substantial disability required in this case.

8. Dr. Pyo's report and testimony that Ms. Cunningham's psychiatric conditions are not substantially disabling applied the correct legal standard for CalPERS disability retirement cases and was persuasive.

9. A preponderance of the competent medical evidence did not establish that Ms. Cunningham is substantially disabled from performing the usual and customary duties of a CSO II. Although returning to work would likely be interpersonally uncomfortable for her, this is not enough to establish a disability. Moreover, Dr. Pyo testified that working consistently with a therapist may help respondent process the anxiety and anger she feels as a result of her work. By her own testimony, Ms. Cunningham has not given therapy a chance to be effective.

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ORDER

The application of Natalie M. Cunningham for disability retirement is denied.

DATE: December 17, 2024

Alan R. Alvord

ALAN R. ALVORD

Administrative Law Judge

Office of Administrative Hearings