

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 and Earlier Retirement Date of:**

JEFFREY SPRINGER, JR., Respondent

and

**RICHARD J. DONOVAN CORRECTIONAL FACILITY,
CALIFORNIA DEPARTMENT OF CORRECTIONS AND
REHABILITATION, Respondent.**

Agency Case No. 2022-0727

OAH No. 2023040441

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, heard this matter on March 27, and April 3, 2025, by videoconference.

Senior Attorney Bryan R. Delgado represented complainant California Public Employees' Retirement System (CalPERS).

Attorney Andy Katz represented respondent Jeffrey Springer, Jr.

No appearance was made by or on behalf of respondent Richard J. Donovan Correctional Facility, California Department of Corrections and Rehabilitation (CDCR).

The record was closed, and the matter was submitted for decision on April 3, 2025.

ISSUES

Is respondent Jeffrey Springer, Jr., (respondent) substantially incapacitated from the performance of his usual and customary duties as a correctional officer for CDCR as a result of his internal or podiatric conditions?

Did respondent make a mistake which was the result of inadvertence, mistake, surprise, or excusable neglect curable by Government Code section 20160 which entitled him to an earlier retirement date of July 1, 2021?

FACTUAL FINDINGS

Background and Procedural History

1. Respondent was employed as a correctional officer at Richard J. Donovan Correctional Facility, CDCR. By virtue of his employment, respondent was a state safety member of CalPERS.

2. On August 6, 2018, respondent visited the CalPERS regional office to inquire about disability retirement. Respondent was advised of the disability retirement process and the deadline for submitting supporting documentation. That

same day respondent submitted a retirement allowance estimate request with a retirement date of December 31, 2018.

3. On August 25, 2018, CalPERS sent letters to respondent with the estimates based on the retirement date of December 31, 2018.

4. On August 9, 2021, CalPERS received respondent's application for industrial disability retirement (IDR). Respondent signed the application on August 5, 2021, and requested a retirement date of July 1, 2021. The application listed the disabling conditions as "no prolonged sitting/standing/walking/shortness of breath/edema in legs/legs swelling/leg pain no running/no stairs/no ladders/(indecipherable word) hand strength/movement walk with a cane/episodes of blurred vision/fall risk/no kneeling." The application stated his last "day on payroll" was December 31, 2018.

5. In a letter dated July 28, 2022, CalPERS denied respondent's application for IDR stating that his "internal (chronic renal disease, deep vein thrombosis, hypertension)" conditions were not disabling. CalPERS determined that respondent was not substantially incapacitated from the performance of his job duties.

6. On August 15, 2022, respondent appealed the denial of his IDR application.

7. On a date not established by the record, respondent requested that CalPERS consider his podiatric conditions during his appeal for the denied internal conditions.

8. In a letter dated March 18, 2025, CalPERS denied respondent's application for IDR based on his podiatric conditions.

9. On March, 20, 2025, Sharon Hobbs signed a first amended statement of issues in her official capacity as Chief of the Disability and Survivor Benefits Division, CalPERS, seeking to establish whether or not respondent, at the time of his application was substantially incapacitated from the performance of his usual and customary duties as a correctional officer due to his internal or podiatric conditions; and whether he made a mistake which was the result of inadvertence, mistake, surprise or excusable neglect which entitled him to an earlier retirement date of July 1, 2021. This hearing ensued.

10. At the conclusion of the hearing, respondent requested to amend his application to reflect a retirement date of August 1, 2021. That request was unopposed and was granted, rendering the second issue in the first amended statement of issues moot.

Essential Functions and Physical Requirements of Position

11. The essential functions of a correctional officer are set forth in the correctional officer essential functions list. They include performing peace officer duties during adverse, stressful, or unpleasant situations; working a minimum of 40 hours per week plus overtime; wearing approved personal protective equipment; qualifying on firing range; defending self or others, disarm, subdue, and apply inmate restraints; stand (occasionally to continuously); walk (occasionally to continuously); run (occasionally); climb (occasionally to frequently); lift and carry up to 125 pounds or more; stoop, crawl, crouch (occasionally to frequently); and twist the body (frequently to continuously).

12. The physical requirements for respondent's position are set forth in the "physical requirements of position/occupation title" CalPERS form. They include the

following physical actions be done constantly (defined as "over 6 hours"): standing, walking, climbing, bending (neck and waist), twisting (neck and waist), pushing and pulling, lifting/carrying up to 50 pounds, and walking on uneven ground. The requirements for running, crawling, kneeling, and lifting over 50 pounds are to be done occasionally (defined as "up to 3 hours").

Medical Evidence

13. Respondent underwent several evaluations, including individual medical evaluations (IMEs), permanent and stationary evaluations through the workers' compensation process, and qualified medical evaluations (QMEs) both before and after his industrial disability retirement.

14. Suvesh Chandiok, M.D., is a board-certified physician in the areas of internal medicine and endocrinology. Dr. Chandiok has completed less than six evaluations for CalPERS but conducts 8-10 evaluations per year for county agencies.

15. On February 11, 2022, Dr. Chandiok conducted an IME of respondent. As part of his evaluation, Dr. Chandiok reviewed medical records, and the physical requirements and essential functions forms. Dr. Chandiok physically examined respondent. In his report, Dr. Chandiok noted that respondent complained of a history of blood clots in the lower right leg, pulmonary embolism, hypertension, and diabetes. Dr. Chandiok stated that respondent mentioned that he has "chest pressure and breathing problems" and "shortness of breath on exertion."

16. Dr. Chandiok diagnosed respondent with "diabetes mellitus type 2 out of control," hypertension "well controlled," "stable" chronic kidney disease, history of deep vein thrombosis and pulmonary embolism "2018 resolved," chronic back pain, plantar fasciitis, and obesity. Dr. Chandiok opined that respondent was not

substantially incapacitated for the performance of his usual and customary duties as a correctional officer due to an “actual and present internal medicine (chronic renal failure, deep vein thrombosis and hypertension) impairment.”

17. After receiving additional medical records Dr. Chandiok prepared two supplemental IME reports dated June 8, 2022, and February 16, 2024. The additional records did not change Dr. Chandiok’s opinion regarding respondent’s ability to perform his job duties.

18. Dr. Chandiok’s testimony at hearing was consistent with his written reports. He stated that respondent’s “biggest problems” were obesity and uncontrolled diabetes. Dr. Chandiok stated that respondent did not have an irregular heartbeat and that the findings of respondent’s electrocardiogram were unremarkable. Dr. Chandiok opined that respondent’s obesity was at the root of all his issues and complications.

19. Jay K. Benard, D.P.M., is a board-certified podiatric surgeon. Dr. Benard is in his second year of performing evaluations for CalPERS. He retired from private practice in 2020, during the COVID-19 pandemic.

20. On March 7, 2025, Dr. Benard conducted an IME of respondent. As part of his evaluation, Dr. Benard reviewed medical records, and the physical requirements and essential functions forms. Dr. Benard physically examined respondent. In his report, Dr. Benard noted that respondent stated he has had “ongoing chronic foot pain dating back to 2007.” Dr. Benard observed that respondent was using a cane to aid walking, and that respondent had difficulty walking on both his heels and the balls of his feet. During the physical examination, Dr. Benard observed that respondent had “diminished sensation to light touch, bilateral.”

21. Dr. Benard diagnosed respondent with “pes planus, bilateral” and plantar fasciitis, bilateral. Dr. Benard opined that respondent suffered from “garden variety plantar fasciitis” and that it was extremely rare for plantar fasciitis to “persist more than a year or two with appropriate treatment.” Dr. Benard opined that respondent was not substantially incapacitated for the performance of his usual and customary duties as a correctional officer due to his podiatric condition.

22. Dr. Benard’s testimony was largely consistent with his written report. One distinct difference is that Dr. Benard testified that he did not believe that respondent needed to use a cane to aid walking. Dr. Benard disagreed with Dr. Levy’s diagnosis of bilateral diabetic neuropathy stating that respondent’s diminished sensation to light touch while responsive to sharp touch was inconsistent with that diagnosis. Dr. Benard further stated that it was not a diagnosis that should be made by a podiatrist or podiatric surgeon.

23. Leslie Levy, D.P.M., is a board-certified podiatric surgeon. Dr. Levy has conducted approximately 60 IMEs and conducts 30-40 QMEs per year. Dr. Levy is currently in private practice specializing in workers’ compensation cases. Dr. Levy has treated many correctional officers and approximately 9,000 patients with plantar fasciitis.

24. On September 10, 2022, Dr. Levy conducted a QME of respondent. As part of his evaluation, Dr. Levy reviewed medical records, and the physical requirements and essential functions forms. Dr. Levy physically examined respondent. In his report, Dr. Levy noted that respondent’s chief complaint was bilateral foot pain. Dr. Levy observed that respondent complained of numbness or tingling sensations in his toes which Dr. Levy termed “diabetic neuropathy.”

25. Dr. Levy diagnosed respondent with bilateral plantar fasciitis, bilateral diabetic neuropathy, and "gait derangement." Dr. Levy opined that respondent had reached maximum medical improvement from treatment. Dr. Levy imposed restrictions on respondent of "no prolonged standing and walking, no heavy lifting, even ground preferred." Dr. Levy opined that respondent was substantially incapacitated for the performance of his usual and customary duties as a correctional officer.

26. After receiving additional medical records Dr. Levy prepared four supplemental QME reports dated June 7, 2023, May 28, 2024, July 20, 2024, and September 14, 2024. The additional records did not change Dr. Levy's opinion regarding respondent's ability to perform his job duties.

27. Dr. Levy's testimony was consistent with his written reports.

28. Dr. Levy has treated over 9,000 patients with plantar fasciitis. He is currently treating patients in private practice and has conducted approximately 60 IMEs. Dr. Levy's opinion of respondent's podiatric condition was informed by his expertise in treating that specific condition. In summary, Dr. Levy's opinion was more reliable and trustworthy regarding respondent's podiatric condition and whether he was substantially incapacitated from the performance of his duties as a correctional officer than that of Dr. Benard.

Respondent's Additional Evidence

29. Respondent provided no medical evidence, competent or otherwise, regarding his internal conditions.

30. Respondent testified that his foot pain became much more pronounced and sharper in 2018. He is currently unable to walk for a long period of time and uses

a cane. Respondent is unable to perform many of the physical requirements of his job as a correctional officer including constantly standing, walking, climbing, or lifting up to 50 pounds. He stated that the pain in his feet keeps him from being able to do those things. Respondent testified in an open and forthright manner consistent with one who is being truthful.

LEGAL CONCLUSIONS

1. The applicant for a benefit has the burden of proof to establish the right to the claimed benefit; the standard of proof is a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051; Evid. Code, § 115.)

2. Government Code section 21151, subdivision (a), provides that a state safety member of CalPERS who is incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, regardless of age or amount of service. In determining whether a member is eligible to retire for disability, the CalPERS Board of Administration must make a determination based on competent medical opinion and must not use disability retirement as a substitute for the disciplinary process. (Gov. Code, § 21156, subd. (a)(2).)

3. Government Code section 20026 provides that "disability" and "incapacity for performance of duty" as a basis of retirement "mean disability of permanent or extended duration . . . on the basis of competent medical opinion." An individual is "incapacitated for the performance of duty" if he is substantially unable to perform his usual duties. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876.)

Discussion

4. Dr. Levy's testimony and report provided competent medical evidence establishing that respondent's podiatric condition requires permanent work restrictions that are incompatible with the essential functions of a correctional officer. The evidence established that respondent's podiatric condition precludes him from performing the usual duties of a correctional officer.

5. Dr. Chandiok's testimony and reports provided competent medical evidence that respondent's internal conditions did not substantially incapacitate respondent from the performance of his usual and customary duties as a correctional officer.

6. No evidence established that respondent's internal conditions required any work restrictions. Respondent failed to establish that his internal conditions precluded him from performing the usual duties of a correctional officer.

DETERMINATION OF ISSUES

Respondent Jeffrey Springer, Jr., is incapacitated for the performance of his duties as a correctional officer within the meaning of Government Code section 20026, by reason of his podiatric condition.

Respondent is not incapacitated for the performance of his duties as a correctional officer because of his internal conditions.

ORDER

The Determination of Issues is hereby certified to the Board of Administration of the California Public Employees' Retirement System.

DATE: May 5, 2025

A handwritten signature in cursive script that reads "Traci C. Belmore".

TRACI C. BELMORE

Administrative Law Judge

Office of Administrative Hearings