

ATTACHMENT A
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:**

DANIELLE M. L. WADE, Respondent,

and

**CALIFORNIA INSTITUTION FOR MEN, CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION,
Respondent.**

Agency Case No. 2024-0659

OAH No. 2025010577

PROPOSED DECISION

Michelle C. Hollimon, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on April 22, 2025.

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

Danielle M. L. Wade, respondent, represented herself.

California Institution for Men, California Department of Corrections and Rehabilitation (CDCR), respondent, did not appear, despite being properly noticed. This matter proceeded as a default against CDCR under Government Code section 11520, subdivision (a).

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on April 22, 2025.

ISSUE

Was respondent¹ substantially incapacitated from performing the usual and customary duties of a correctional officer for CDCR due to orthopedic conditions (right hand, elbow, wrist, back, hip, and left hand) at the time she filed her application for service pending industrial disability retirement?

¹ The term respondent used hereafter throughout this proposed decision refers to Danielle M. L. Wade only, and not CDCR.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent was employed as a correctional officer at California Institution for Men, CDCR until she separated from employment. By virtue of her employment, respondent is a state safety member of CalPERS.

2. On February 15, 2024, respondent signed an application for service pending industrial disability retirement based on orthopedic conditions (right hand, elbow, wrist, back, hip, and left hand). Respondent retired for service effective May 1, 2024.

3. By letter dated June 28, 2024, CalPERS notified respondent:

We reviewed all the medical evidence submitted. Our review included reports prepared by Anthony Matan, M.D., Edwin Haronian, M.D., Stephen P Suzuki, M.D. Based on the evidence in those reports, we have determined your orthopedic (right hand, elbow, wrist, back, hip, left hand) conditions is not disabling. As a result, we find you are not substantially incapacitated from the performance of your job duties as a Correctional Officer with the Department of Corrections Institution for Men. Therefore, we regret to inform you that your application for industrial disability retirement is denied.

4. CalPERS notified respondent of her right to appeal, which she exercised on July 19, 2024.

5. On January 9, 2025, complainant executed the Statement of Issues in this matter in her official capacity noting that the issue on appeal is limited to whether at the time of her disability application, respondent was substantially incapacitated from the performance of her duties as a correctional officer on the basis of orthopedic conditions (right hand, elbow, wrist, back, hip, and left hand).

6. Respondent timely appealed and this hearing followed.

The Usual and Customary Duties of a Correctional Officer

7. Two documents describing duties of a correctional officer were received in evidence. One document entitled "Physical Requirements of Position/Occupational Title," described the usual job duties of a correctional officer, including physical requirements. The other document entitled "California Institution For Men Central Operations Post Orders" described various responsibilities and requirements for the specific position of "Tower 10 (Armed Post)," including all personal state-issued equipment to be worn while on-duty.

8. The physical requirements for respondent's position, as set forth on the Physical Requirements of Position/Occupational Title form are as follows: the requirements of sitting, standing and working at heights are to be done constantly (defined as over five hours). The requirements of lifting 26 pounds to more than 50 pounds and bending (neck) are to be done occasionally (defined as 31 minutes up to 150 minutes). The requirements for lifting/carrying up to 25 pounds, climbing, squatting, bending (waist), twisting (neck and waist), reaching above and below the shoulder, pushing and pulling, holding and light grasping, and walking on uneven ground are to be done infrequently (defined as five minutes to 30 minutes). The requirements of walking, crawling, running, kneeling, power grasping, pinching and

picking, use of a computer keyboard/mouse, driving and operating hazardous machinery are to be done never/rarely (defined as less than five minutes).

Complainant's Evidence

TESTIMONY AND INDEPENDENT MEDICAL EXAMINATION (IME) REPORT OF DR. STEPHEN P. SUZUKI

9. The testimony of Stephen Paul Suzuki, M.D., and his IME report, which was received into evidence and was consistent with his testimony, are summarized as follows: Dr. Suzuki is a board-certified orthopedic surgeon. Dr. Suzuki completed medical school in 1982 at the University of Chicago. He completed his internship in general surgery in 1983, and his residency in orthopedic surgery in 1987, both at Northwestern University Medical School. Dr. Suzuki retired from clinical practice approximately two years ago but continues to perform Qualified Medical Examinations (QMEs) and IMEs. Dr. Suzuki has been performing medical examinations for various California state organizations for approximately 30 years. Dr. Suzuki estimated that he performs approximately 30-40 QMEs every month, and approximately 10-15 IMEs each year. Dr. Suzuki is an expert in the field of orthopedics.

10. Dr. Suzuki conducted an IME of respondent at the request of CalPERS related to respondent's request for disability retirement. As part of his evaluation, Dr. Suzuki reviewed medical records, and the two job descriptions received in evidence related to respondent's position with CDCR. On May 18, 2024, Dr. Suzuki physically examined respondent.

11. Regarding her right hand, respondent's chief complaints were constant, aching, sharp pain, along with numbness and a pins and needles sensation, which radiate to her fingers. With regard to her left hand, respondent's chief complaints were

intermittent, aching, sharp pain, along with numbness and a pins and needles sensation. Dr. Suzuki examined respondent's hands and found no swelling, effusion or erythema. Dr. Suzuki did find mild carpal tunnel syndrome in respondent's left hand and mild to moderate carpal tunnel syndrome in respondent's right hand. Respondent had full range of motion of the fingers and respondent's finger testing was normal in both hands. Dr. Suzuki testified there were no job duties that respondent could not perform as a result of orthopedic conditions related to her hands.

12. Regarding her right elbow, respondent's chief complaints were constant numbness and a pins and needles sensation, which radiate to her armpit. Dr. Suzuki testified that he did find tenderness over the distal triceps tendon, but otherwise respondent's exam results with respect to her elbow would be considered normal. Dr. Suzuki testified there were no job duties that respondent could not perform as result of orthopedic conditions related to her right elbow.

13. Regarding her right wrist, respondent's chief complaints were constant, sharp pain, and occasional numbness. With regard to her left wrist, respondent's chief complaints were intermittent, aching, sharp pain. Dr. Suzuki testified that as with respondent's hands, there was evidence of carpal tunnel syndrome, more so with respondent's right wrist. Dr. Suzuki testified there were no job duties that respondent could not perform as a result of orthopedic conditions related to her wrists.

14. Regarding her low back, respondent's chief complaints were constant, aching, sharp pain that radiates to her buttocks. Respondent reported her back often cracks and pops and she has back spasms. Dr. Suzuki testified that there was decreased range of motion and lower back pain, but otherwise respondent's test results fell within normal ranges. Dr. Suzuki testified there were no job duties that respondent could not perform as a result of orthopedic conditions related to her back.

15. Regarding her hips, respondent's chief complaints were intermittent, sharp pain that alternates between both hips, never involves both hips, and radiates down to her right thigh. Dr. Suzuki testified that he did not find any issues with respondent's hip joints and attributed what she described as hip pain as being primarily related to her lower back. Dr. Suzuki testified there were no job duties that respondent could not perform as a result of orthopedic conditions related to her hips.

16. Dr. Suzuki testified that while respondent does suffer from carpal tunnel syndrome and back pain, there were no job duties respondent could not perform because of these diagnoses. Respondent kept working until she chose to voluntarily retire. The medical records reviewed indicated that her primary care physicians and the physician that performed respondent's QME all arrived at the same conclusion as he did – respondent could perform her usual and customary work duties. Dr. Suzuki completed an IME report, dated May 30, 2024, regarding his evaluation of respondent and his review of relevant documents.

17. Dr. Suzuki further testified that he reviewed medical records provided to him after his report was prepared, including magnetic resonance imaging (MRI) images, and nothing in those records changed his opinions.

TESTIMONY OF EVELYN MURILLO-SORIA

18. The testimony of Evelyn Murillo-Soria is summarized as follows: Evelyn Murillo-Soria is employed by CalPERS as an analyst. Her duties include reviewing disability retirement applications, as well as preparing appeals for CalPERS's decisions on disability retirement applications. Ms. Murillo-Soria was assigned to review respondent's disability retirement application.

19. Ms. Murillo-Soria testified that respondent submitted an application for service pending industrial disability retirement on February 15, 2024. Respondent was approved for service retirement and then needed to be evaluated regarding her request for disability retirement based on orthopedic issues. Respondent was sent to Dr. Suzuki for an IME.

20. Ms. Murillo-Soria testified that on June 18, 2024, the Assistant Chief of the Disability and Survivor Benefits division wrote a letter to respondent informing her that, based on the medical evidence submitted, including reports from Dr. Suzuki and two other medical professionals, CalPERS determined that respondent's application for disability retirement based upon orthopedic hand, elbow, wrist, back and hip issues was denied. The letter informed respondent that her orthopedic conditions were determined to not be disabling, and that respondent was not substantially incapacitated from the performance of her job duties as a correctional officer with CDCR. The letter further stated that respondent would continue to receive service retirement benefits.

21. Respondent was advised of her right to appeal the denial decision. Ms. Murillo-Soria testified that respondent's appeal of the eligibility determination was received on July 22, 2024, and a letter was sent to respondent on July 25, 2024, acknowledging receipt of her appeal.

Respondent's Evidence

RESPONDENT'S TESTIMONY

22. Respondent's testimony is summarized as follows: respondent worked for CDCR for 29 years, during which time she made several workers' compensation claims

for wrist and back injuries. The examinations performed show she has been injured and evidence carpal tunnel syndrome and lower back issues.

23. Respondent testified in an open and forthright manner consistent with one who is being truthful.

RESPONDENT'S DOCUMENTARY EVIDENCE

24. Respondent provided excerpts of her medical records, including pages of MRI exam findings from April and May 2024, pages from a report dated May 16, 2023, by Dr. Rohini Patel of Occspecialists in Pomona, California, and pages from an updated report dated September 6, 2024, from Dr. Anthony Matan, M.D., who performed a QME on respondent in October 2023.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The applicant for a benefit has the burden of proof to establish the right to the claimed benefit. (Evid. Code, § 500.) Respondent therefore has the burden of proof to establish that CalPERS's determination that she is not eligible for industrial disability retirement based on orthopedic conditions (right hand, elbow, wrist, back, hip, and left hand) is incorrect, and that she is substantially incapacitated from performing the usual and customary duties of a correctional officer for CDCR as a result of her orthopedic conditions.

2. 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.)

Applicable Statutes

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. Government Code section 21151, subdivision (a) provides:

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.

5. Government Code section 21152 provides:

Application to the board for retirement of a member for disability may be made by:

- (a) The head of the office or department in which the member is or was last employed, if the member is a state member other than a university member.

[¶] . . . [¶]

(d) The member or any person in his or her behalf.

6. Government Code section 21154 provides:

The application shall be made only (a) while the member is in state service . . . on receipt of an application for disability retirement of a member . . . the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for the performance of duty. On receipt of the application with respect to a local safety member other than a school safety member, the board shall request the governing body of the contracting agency employing the member to make the determination.

7. Government Code section 21156 provides, in part:

(a) (1) If the medical examination and other available information show to the satisfaction of the board, or in case of a local safety member, other than a school safety member, the governing body of the contracting agency employing the member, that the member in the state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability, unless the member is qualified to be retired for service and applies therefore prior to the effective date of his or her retirement for disability or within 30 days after

the member is notified of his or her eligibility for retirement on account of disability, in which event the board shall retire the member for service.

(2) In determining whether a member is eligible to retire for disability, the board or governing body of the contracting agency shall make a determination on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process. . . .

8. Government Code section 21166 provides in part:

If a member is entitled to a different disability retirement allowance according to whether the disability is industrial or nonindustrial and the member claims that the disability as found by the board, or in the case of a local safety member by the governing body of his or her employer, is industrial and the claim is disputed by the board, or in case of a local safety member by the governing body, the Workers' Compensation Appeals Board, using the same procedure as in workers' compensation hearings, shall determine whether the disability is industrial. . . .

Case Law Defining Disability Retirement

9. "Incapacitated for the performance of duty" means the "substantial inability of the applicant to perform [her] usual duties." (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876.) When an applicant can perform his or her customary duties, even though doing so may be difficult or painful,

the employee is not incapacitated and does not qualify for a disability retirement. (*Mansperger, supra*, 6 Cal.App.3d, at pp. 886-887.) Mere difficulty in performing certain tasks is not enough to support a finding of disability. (*Hosford v. Bd. of Administration* (1978) 77 Cal.App.3d 854.) The above-referenced authority is also discussed thoroughly in several precedential decisions.²

Interplay Between CalPERS's Disability Retirement and Workers' Compensation

10. Although the Public Employees' Retirement law and the Workers' Compensation law are aimed at the same general goals with regard to the welfare of employees and their dependents, they represent distinct legislative schemes. Courts

² An agency may designate a decision as precedential authority that may be relied upon in future decisions if it contains a significant legal or policy determination of general application that is likely to recur. The following precedential decisions apply to and were received as evidence in this case: *In the Matter of the Application for Reinstatement from Industrial Disability Retirement of Willie Starnes and Department of California Highway Patrol*, Case No. 2530, OAH No. L-1999060537, effective January 22, 2000; *In the Matter of the Application for Disability Retirement of Theresa V. Hasan and Department of Corrections [Parole and Community Services Division, Region II]*, Case No. 2704, OAH No. N-1999100099, effective April 21, 2000; *In the Matter of the Application for Disability Retirement of Ruth A. Keck and Los Angeles County Schools [Glendora Unified School District]*, Case No. 3138, OAH No. L-19991200097, effective September 29, 2000.

may not assume that the provisions of one apply to the other absent a clear indication from the Legislature. (*Pearl v. W.C.A.B.* (2001) 26 Cal.4th 189, 197.)

11. 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.)

12. Generally, a Workers' Compensation Appeals Board proceeding concerns whether the employee suffered *any* job-related injury, and if that injury resulted in some permanent residual loss, the Workers' Compensation Appeals Board awards the employee a permanent disability rating. Retirement boards, on the other hand, focus on a different issue: whether an employee has suffered an injury or disease of such magnitude and nature that he is incapacitated from substantially performing his job responsibilities. Because of the differences in the issues, "[a] finding by the [Workers' Compensation Appeals Board] of permanent disability, which may be partial for the purposes of workers' compensation, does not bind the retirement board on the issue of the employee's incapacity to perform his duties." (*Bianchi v. City of San Diego* (1989) 214 Cal. App. 3d 563, 567, citations omitted.)

Competent Medical Opinion

13. CalPERS makes its determination whether a member is disabled for retirement purposes based upon “competent medical opinion.” That determination is based on the evidence offered to substantiate the member’s disability. (*Lazan v. County of Riverside* (2006) 140 Cal. App. 4th 453, 461, distinguished on other grounds.)

14. Evidence Code section 801 sets forth the limitations of an expert’s opinion and provides:

If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:

(a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and

(b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion.

15. The Law Revision Committee Comments to Section 801 note that an expert’s opinion must be perceived by or personally known; the matter relied upon by

the expert must be of a type that may reasonably be relied upon; and an expert may not base his opinion upon any matter that is an improper basis for an opinion.

16. The determinative issue in each case is whether the witness has sufficient skill or experience in the field so that the testimony of the witness would likely assist the trier of fact "in the search for the truth," and "no hard and fast rule can be laid down which would be applicable in every circumstance." (*Brown v. Colm* (1974) 11 Cal. 3d 639.)

17. A properly qualified expert may offer an opinion relating to a subject that is beyond common experience, if that expert's opinion will assist the trier of fact but the expert's opinion may not be based on assumptions of fact that are without evidentiary support or based on factors that are speculative or conjectural, for then the opinion has no evidentiary value and does not assist the trier of fact. (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 529-530.)

Evaluation

18. Respondent failed to prove by a preponderance of the evidence that she is substantially incapacitated to perform her usual and customary duties of a correctional officer at California Institution for Men, CDCR, based upon right hand, elbow, wrist, back, hip, and left hand orthopedic conditions. This conclusion is based upon Dr. Suzuki's opinion after performing an independent examination of respondent and reviewing medical records provided to him. Dr. Suzuki's testimony was credible and forthright.

19. Respondent provided no competent medical evidence to refute the credible testimony of Dr. Suzuki in this matter. The medical records provided by

respondent are not complete and no testimony from any medical professional, other than Dr. Suzuki, was provided.

20. There does not appear to be any dispute that respondent suffers from lower back pain or carpal tunnel syndrome. However, the issue that is the subject of this hearing is not whether respondent suffers from any injury, but rather, whether respondent's injuries precluded her from performing the duties of a correctional officer at the time she filed her application for service pending industrial disability retirement. No evidence established that respondent was substantially incapacitated to perform her usual and customary duties of a correctional officer at California Institution for Men, CDCR, based upon right hand, elbow, wrist, back, hip, and left hand orthopedic conditions at the time she filed her application for service pending industrial disability retirement.

Cause Exists to Deny Respondent's Application

21. Cause exists to conclude that respondent was not substantially incapacitated from performing the usual and customary duties of a correctional officer for CDCR due to orthopedic conditions (right hand, elbow, wrist, back, hip, and left hand). As such, she does not qualify for industrial disability retirement on the basis of her orthopedic conditions (right hand, elbow, wrist, back, hip, and left hand), and her application for disability retirement is denied.

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ORDER

CalPERS's determination that Danielle M. L. Wade was not substantially incapacitated from the performance of her usual and customary duties as a correctional officer for CDCR as of the date of her application for industrial disability retirement based upon her orthopedic conditions (right hand, elbow, wrist, back, hip, and left hand) is affirmed.

DATE: May 21, 2025

M. C. Hollimon

M. C. Hollimon (May 21, 2025 16:53 PDT)

MICHELLE C. HOLLIMON

Administrative Law Judge

Office of Administrative Hearings