ATTACHMENT A

PROPOSED DECISION

BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Reinstatement from Industrial Disability Retirement of:

KIMBERLY L. BRYAN,

Respondent,

and

GLENDORA UNIFIED SCHOOL DISTRICT,

Respondent.

Agency Case No. 2024-0526

OAH No. 20241202575

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 9, 2025 by videoconference.

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

Timothy Kokhanuets, Esq., Parker & Covert, represented Respondent Glendora Unified School District (District).

Respondent Kimberly L. Bryan (Respondent), represented herself.

Oral and documentary evidence was received at the hearing. The record was held open for the parties to simultaneously file and serve written closing briefs by April 15, 2025. CalPERS timely filed and served its closing brief, which was marked as Exhibit 13. District timely filed and served its closing brief, which was marked as Exhibit B. The record was closed and the matter was submitted for decision on April 15, 2025.

On May 6, 2025, the ALJ reopened the record for 30 days for the parties to file any objections to the consideration of a Workers' Compensation document, which was marked for identification as Exhibit A. On April 15, 2025, CalPERS filed objections to admission of the Exhibit A. The document was admitted into evidence over the objections. The matter was deemed re-submitted on May 6, 2025.

ISSUE

Should CalPERS be permitted to cancel Respondent's disability retirement.

FACTUAL FINDINGS

Jurisdictional Matters

1. On December 3, 2024, Sharon Hobbs, made and filed the Accusation in her official capacity as the Chief of the Benefits Services Division of CalPERS.

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2. On April 5, 2021, Respondent submitted an application for disability retirement, claiming a disability based upon Complex Regional Pain Syndrome (CRPS), a neurological condition, resulting from a work place injury that occurred on February 8, 2017. The initial injury occurred when Respondent attempted to restrain a student during an emergency while she was on duty as a School Office Manager employed by the District (February 2017 incident).

3. Respondent is a local miscellaneous member of CalPERS based upon her employment with District.

4. On September 3, 2021, CalPERS approved Respondent's application for disability retirement effective April 16, 2021 on the basis of CRPS, a neurological condition. Respondent was approximately 37 years old at the time and under the minimum age for voluntary service retirement.

5. On July 22, 2022, Respondent reached a full and final workers' compensation settlement with the District for her injuries to her neck, shoulders, upper and lower extremities, nervous system, back, vocal cords, psychological injury, stress and CRPS. Pursuant to the settlement, Respondent waived her rights to return to employment at the District.

6. On October 24, 2023 and December 11, 2023, CalPERS notified Respondent that her disability retirement was under review to determine if she continued to meet the qualification to receive disability retirement benefits as provided by Government Code section 21192.

7. On March 21, 2024, CalPERS informed Respondent in writing that CalPERS had scheduled her for an independent medication examination (IME) with

Khaled A. Anees, M.D., on April 10, 2024. CalPERS later notified Respondent on April 2, 2024, that the IME with Dr. Anees had been rescheduled to April 10, 2024.

8. Dr. Anees graduated from Mansoura University, School of Medicine in Egypt in 2003. He completed his neurology research fellowship, medicine internship, and his neurology residency at the Cleveland Clinic in Ohio. In 2013, he complete a neuromuscular medicine/clinical neurophysiology fellowship at the University of California, Los Angeles. He is licensed to practice medicine in California, Colorado, Michigan, New Jersey, Washington and Wisconsin. He has also conducted research, and given lectures and presentations on various topics related to neurology.

9. On April 10, 2024, Dr. Anees performed his initial neurological IME. Dr. Anees spent 30 minutes conducting a "face to face" examination/interview of Respondent, one hour reviewing her medical records and one hour preparing his report dated April 10, 2024. He also prepared a supplemental report on February 21, 2025, after reviewing additional medical records. The evidence did not establish how much time Dr. Anees spent preparing the second report.

10. Dr. Anees summarized Respondent's extensive medical records in his report and supplemental report. The actual records are not in evidence.

11. According to the summaries, Respondent was initially diagnosed with shoulder strain. On April 24, 2017, she was diagnosed with early frozen right shoulder syndrome and given a pain injection. A Magnetic Resonance Image (MRI) showed fluid in the subacromial space of the shoulder. In 2018, she sought care from Gary Moscarello, M.D., an orthopedist. On November 6, 2018, Dr. Moscarello saw Respondent and noted that she was experiencing severe pain in the right shoulder, scapular area and right leg. At the time, Respondent was pregnant. Respondent had to

stop using pain medication when she learned she was pregnant. Her pain became more severe during the pregnancy and she became bedridden. After her pregnancy, she felt better for approximately two weeks until she developed body aches and flulike symptoms, became overwhelmed with pain all over her body, headaches and nausea. Respondent used a cane to walk and was not able to move her right arm when she saw Dr. Moscarello.

12. Joshua Prager, M.D., diagnosed Respondent with CRPS. From 2017 to 2018, Respondent received eight Stellate Ganglion block injections at UCLA. Beginning in 2019, she received between four and six lumbar injections. In 2020, two spinal cord stimulators (neck and back) and an internal pulse generator were surgically placed. Respondent became ill with an infection after one of the surgeries, was hospitalized with an infection and had to remove one of the stimulators.

13. In 2020 and 2021, Paul Booz, M.D., noted Respondent's continued pain, sensitivity and tenderness in various parts of her body. He also noted that pain management had not been effective, Respondent continued to have pain in her right shoulder, hip and extremities.

14. In March of 2021, Respondent completed a six week Functional Restoration Program at Stanford University which provided a multi-disciplinary approach to pain management. Respondent experienced some relief from the program until she injured her knee, causing swelling which required her to temporarily use a wheelchair.

15. On July 15, 2024, Hayley B. Osen, M.D., performed medial branch nerve locks at C4 to C7 facets in Respondent's neck. Respondent received some temporary

relief through the nerve blocks, but her pain returned by August of 2024 and by October 2024 had spread to other parts of her body.

16. On November 26, 2024, Dr. Osen performed an ablation of the right medial branch nerves at the C4-C7 level in Respondent's neck. Dr. Osen's December 1, 2024 progress note indicates that Respondent experienced relief on the right side as a result of the ablation, but began experiencing increased pain on the left side. Dr. Osen's note also indicates she recommended a left side ablation. There is no indication that the left side ablation was completed.

17. On February 3, 2025, Nehal Patel M.D., an internal medicine specialist at Citrus Family Practice, entered the following progress note:

> The patient has been diagnosed with complex regional pain syndrome (CRPS). She has a spinal cord stimulator in the lumbar region and is under the care of UCLA Pain Management, where she receives treatments including radiofrequency ablation and procedural injections. Her last documented visit was in December 2024. The patient has idiopathic intracranial hypertension. This condition causes her severe throbbing headaches. She is actively being followed and managed by a neurologist Dr. Mohsen Ali. The patient has post-traumatic stress disorder (PTSD), depression, and anxiety. These conditions are currently being treated within the primary care setting and require ongoing medication management as the symptoms are not yet stable. The patient experiences chronic pain and mental instability that significantly limits her ability to

> perform routine activities of daily living, as these activities exacerbate her symptoms. Despite undergoing multidisciplinary treatment including physical therapy and medication management, the patient's pain persists with minimal improvement. In this examiner's professional medical opinion, given the chronic and debilitating nature of her condition, it is unlikely that she will experience sufficient improvement to allow for full-time work.

18. Dr. Anees, a board certified neurologist, described CRPS as a type of nervous system dysregulation. It is diagnosed by history and physical examination. Dr. Anees opined that Respondent does not have a neurological impairment, specifically, CRPS, that rises to the level of substantial incapacity to perform her usual job duties. In his brief examination and interview of Respondent, Dr. Anees determined that her "extremities were normal, with no changes in skin color or temperature, no hyperalgesia or allodynia, no sweating changes and no swelling or trophic changes. Based on symptoms description and my clinical examination, there is not enough current objective evidence of [CRPS] at this time." His determination was based upon his summary of her medical records and his 30 minute examination/interview.

19. Respondent's essential duties and responsibilities as noted by her job description are:

> *Coordinates and performs school office activities. Develops and implements best practices for information and document flow in the office, and to and from teachers/classrooms and specialists.

*Coordinates communications about school activities, events and timeliness to relieve the Principal of routine administrative details and conveyances to parents.

*Performs secretarial duties for the Principal and other credentialed staff. Composes letters, memoranda and bulletins independently within scope of authority. Schedules appointments and maintains calendars.

*Registers students into the school. Receives files and initiates contact with former schools to obtain official records. Enters data into a student information system and creates a permanent record.

*Maintains up to date student data files. Composes correspondence, reports, bulletins, memoranda, manuals and other materials from standing instruction, notes, and meeting recollections.

*Assists in the preparation of the school budget. Organizes budget and financial material to monitor expenditures and maintains accurate fiscal records for a variety of programs. Maintains a variety of files.

*Monitors student enrollment to maximize average daily attendance. Oversees and may review reports to verify correctness of information, and participates in preparing monthly reports to the District

*Coordinates and monitors requests for substitute teachers and other staff, including class rosters, instructors, contact information, schedules and classroom access.

*Provides support to processing of certificated and classified payroll items. Maintains absence records and reports with respect to personnel.

*Prepares from rough drafts or verbal instructions a variety of materials including master schedules, letters, memoranda, requisitions, lists, bulletins, reports and statistical data.

*Requisitions, receives, stores and distributes supplies and office materials. Maintains materials and supply inventory.

*Performs research as directed by the Principal. Computes and compiles information and statistics on subjects related to student attendance, demographics, and achievement.

*Receives and reports maintenance issues to Facilities Maintenance.

*Coordinates and provides administrative support to special events such as those for visitations, open house, and parent engagement.

*May provide first aid and control and/or administer medications to students as authorized and trained by a Registered Nurse.

*May provide work direction and guidance to other support staff.

*Performs other duties as assigned that support the overall objective of the position.

(Ex. 12.)

20. In terms of "physical abilities" the job description provides that:

The position incumbent must be able to function indoors in an office environment engaged in work of primarily a sedentary nature. Requires the ability to use near vision to read printed materials. Requires auditory ability to carry on conversations in person and over the phone. Requires the ability to retrieve work materials from overheard pointing device and keyboard at an acceptable rate to keep up with work requirements to operate microcomputer, and to operate other standardized office equipment, almost constantly requiring repetitive motions.

(Ex. 12.)

21. The "Physical Requirements of Position/Occupational Title" CalPERS form dated May 24, 2021 was completed by Respondent's employer. According to the form, the job duties require constant face-to face public and telephone interactions with the

public, co-workers and supervisory staff. The job frequently requires lifting or carrying of up to 10 pounds for two and a half to five hours and infrequently requires lifting or carrying of 11 to 25 pounds for five to 30 minutes. The employer provided that the job "never/rarely" requires lifting or carrying of more than 26 pounds. Among other requirements, Respondent must frequently sit, stand and walk, constantly bend at the neck and waist, twist at the neck and waist, use a computer, use "fine finger" and "handling" movement including pinching, picking, holding and light grasping. It also provides that Respondent is required to "occasionally" reach above or below her shoulder, push, pull or power grasp. (Ex. 12.)

Respondent's Testimony

22. Respondent testified that before the incident, she had a "dream job." She gave extensive credible testimony about pain and weakness in her limbs, back, neck and shoulder and the various types of pain management and interventions that she has tried. Respondent's symptoms are not consistent in location or intensity varying in range from moderate to severe impacting her sleep and daily life activities. According to Respondent, she has to rest often and her pain prevents her from engaging in many daily living activities including caring for her children at times. The pain Respondent experiences due to her CRPS impacts all aspects of her body, her energy level, stamina and mental health and is accompanied by neurological anomalies such as burning sensations, sharp sensations and weakness. According to Respondent, she is not physically capable of engaging in the required job duties on a consistent basis because of her CRPS.

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LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Generally, the party asserting the affirmative in an administrative hearing has the burden of proof by a preponderance of the evidence (See, *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044; Evid. Code, § 500), and typically, the party seeking to change the status quo bears the burden of proof.

2. In *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051, and footnote 5, the court found "the party asserting the affirmative at an administrative hearing has the burden of proof, including . . . the burden of persuasion by a preponderance of the evidence."

3. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations omitted.] . . . The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325; italics in original.)

4. In this case, CalPERS seeks to change the status quo by cancelling Respondent's entitlement to receive disability retirement benefits. Accordingly, CalPERS has the burden to prove, by a preponderance of the evidence, the grounds necessary to cancel Respondent's industrial disability benefits.

Applicable Law

5. Government Code section 20026 provides, in pertinent part:

"Disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended and uncertain duration, as determined by the board, . . . on the basis of competent medical opinion.

6. Government Code section 21060, subdivision (a), provides in pertinent part:

A member shall be retired for service upon his or her written application to the board if he or she has attained age 50 and is credited with five years of state service.

7. Government Code section 21156, subdivision (a)(2), provides that:

In determining whether a member is eligible to retire for disability, the board or governing body of the board shall make a determination on the basis of competent medical opinion. . .

8. Government Code section 21192, provides, in pertinent part:

The board . . . may require any recipient of a disability retirement allowance under the minimum age for voluntary retirement for service applicable to members of his or her class to undergo medical examination, ... The examination shall be made by a physician or surgeon, ... Upon the basis of the examination, the board or the governing body shall determine whether he or she is still incapacitated, physically or mentally, for duty in the state

> agency . . . where he or she was employed and in the position held by him or her when retired for disability . . . .

9. Government Code section 21193 provides, in part:

> If the determination pursuant to Section 21192 is that the recipient is not so incapacitated for duty in the position held when retired for disability . . . , his or her disability retirement allowance shall be canceled immediately, and he or she shall become a member of this system. If the recipient was an employee of the state . . . and is so determined to be not incapacitated for duty in the position held when retired for disability . . . , he or she shall be reinstated, at his or her option, to that position.

10. Courts have interpreted "incapacitated for the performance of duty" to mean "substantial inability of the applicant to perform [her] usual duties," as opposed to mere discomfort or difficulty. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 877; *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 859-860.) An increased risk of further injury is not sufficient to establish current incapacity; the disability must exist presently. Restrictions which are imposed only because of a risk of future injury are insufficient to support a finding of present disability. (*Hosford, supra,* 77 Cal.App.3d at pp. 862-863.)

11. "The weight to be given to the opinion of an expert depends on the reasons he [or she] assigns to support that opinion; its value rests upon the material from which his [or her] opinion is fashioned and the reasoning by which he [or she] progresses from his [or her] material to his [or her] conclusion[.] Such an opinion is no

better than the reasons given for it[.]" (*White v. State of California* (1971) 21 Cal.App.3d 738, 759-760.) "It is the material from which expert opinion is fashioned and the reasoning of the expert in reaching his [or her] conclusion that is important." (*In re Marriage of Battenburg* (1994) 28 Cal.App.4th 1338, 1345.)

Substantial Incapacity

12. Grounds do not exist for CalPERS to cancel Respondent's industrial disability retirement benefits. The preponderance of the evidence established that Respondent continues to be "substantially incapacitated" for the performance of her usual job duties as a School Office Manager.

13. Respondent was determined incapacitated and eligible to for industrial disability retirement on September 3, 2021. The overwhelming majority of her medical records, as summarized by CalPERS expert witness Dr. Anees, support that determination and demonstrate years of corroborating medical treatment by a variety of physicians, invasive testing and a variety of intensive treatments. There is absolutely no indication from these records that Respondent's condition has changed such that she has recovered sufficiently to perform her job duties including the physical demands of the position. In fact, as summarized by Dr. Anees, Respondent's most recent progress note from her physician in February of 2025 provides that it is "unlikely that she will experience sufficient improvement to allow for full-time work." (Ex. 9.)

14. Dr. Anees conducted a brief 30 minute examination and interview of Respondent and a review of records. His examination/interview and testimony were primarily focused on the color, temperature and indications of swelling and weakness in her limbs. The examination did not include any imaging, medical testing or other

objective diagnostic tools. On balance, Dr. Anees' opinion was not as persuasive as Respondent's testimony which was corroborated by Dr. Anees' own summary of her medical records.

15. A reasonable inference to be drawn from all of this evidence is that Respondent's neurological condition (CRPS), which supported CalPERS's previous finding of "substantial incapacity," has not changed. Respondent remains "substantially incapacitated" for the performance of her usual job duties as a School Office Manager.

16. Based on the foregoing, the preponderance of the evidence established that Respondent continues to be substantially incapacitated for the performance of her usual duties as a School Office Manager office manager at the District. Her industrial disability retirement benefits shall remain in place. (Factual Findings 1-22; Legal Conclusions 1-15.)

ORDER

The appeal of Respondent Kimberely L. Bryan is granted. Her industrial disability retirement benefits shall not be cancelled and shall remain in place.

DATE: 06/18/2025

Glynda Gomez

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings