

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:

JESSICA V. HERNANDEZ-GARNICA,

and

DEPARTMENT OF STATE HOSPITALS – PATTON,

Respondents.

Agency Case No. 2024-0756

OAH No. 2025040952

PROPOSED DECISION

Administrative Law Judge Mario M. Choi, State of California, Office of Administrative Hearings, heard this matter on July 31, 2025, by videoconference.

Senior Attorney Preet Kaur represented complainant California Public Employees' Retirement System (CalPERS).

Respondent Jessica V. Hernandez-Garnica represented herself.

There was no appearance by or on behalf of respondent Department of State Hospitals – Patton. This matter proceeded as a default against this respondent under Government Code section 11520, subdivision (a).

The record closed and the matter was submitted for decision on July 31, 2025.

FACTUAL FINDINGS

Background and Procedural History

1. Respondent Jessica V. Hernandez-Garnica (respondent) was employed as a Psychiatric Technician (Safety) at the Department of State Hospitals – Patton (Patton). By virtue of her employment, respondent was a state safety member of CalPERS.

2. On July 10, 2023, respondent submitted an industrial disability retirement (IDR) application to CalPERS. Her application listed the disability as orthopedic conditions (lower back, bilateral knees, right shoulder, and wrist). Respondent retired for service effective May 12, 2023.

3. In a letter dated January 30, 2024, CalPERS denied respondent's application for IDR, finding that respondent's "orthopedic (lower back, bilateral knees, bilateral shoulders and right thumb/wrist) conditions are not disabling" and that she was not substantially incapacitated from the performance of her duties as a psychiatric technician (safety). CalPERS notified respondent that it also considered respondent's additional allegation of a disabling condition based on a different ailment but could not make a determination based on the medical evidence it had received at that time.

4. Respondent timely appealed the denial by letter dated February 7, 2024, and provided additional medical records.

5. On September 4, 2024, CalPERS notified respondent of its final determination, finding that respondent was permanently disabled or incapacitated from the performance of her duties as a psychiatric technician (safety) on the basis of another condition, but not on her orthopedic conditions.

6. On April 14, 2025, Sharon Hobbs, in her official capacity as Chief of CalPERS's Disability and Survivor Benefits Division, signed a statement of issues seeking to establish whether respondent, at the time of her IDR application, was substantially incapacitated from the performance of her usual and customary duties as a psychiatric technician (safety) due to her orthopedic conditions.

Duties and Functions of Position

7. As a psychiatric technician (safety) at Patton, respondent's major tasks, duties, and responsibilities are as follows:

Psychiatric Technicians work under general supervision and, in addition to their custody responsibilities, provide a basic level of general behavioral and psychiatric nursing care and are expected through their attitude, knowledge, and performance to facilitate the rehabilitation of clients/patients.

Psychiatric Technicians work to maintain order and supervise the conduct of clients/patients, to protect and maintain the safety of persons and property, to provide a

basic level of general behavioral psychiatric nursing care to clients/patients who are mentally disordered offenders, and to participate in the overall psychiatric treatment program.

8. Physically, respondent's position as a psychiatric technician (safety) required frequent (2.5 to 5.0 hours) interactions with inmates, patients, or clients, and with co-workers. The position required occasional (31 minutes to 2.5 hours) lifting or carrying 0 to 25 pounds, sitting, standing, walking, bending, twisting, reaching, computer use, walking on uneven ground, and exposure to extreme temperatures. The position required infrequent (5 to 30 minutes) running, squatting, pushing and pulling, power grasping, handling, fine fingering, and exposure to excessive noise. Rarely (less than 5 minutes) did respondent's position require interacting and communicating with the public, lifting or carrying 26 to 50 pounds, crawling, kneeling, climbing, driving, operating hazardous machinery, exposure to dust, gas, fumes or chemicals, or working at heights.

Surveillance

9. In connection with respondent's IDR application, Sarah Garcia, an investigator for CalPERS, and other investigators surveilled respondent's daily activities. Garcia testified at hearing about the surveillance and her investigation report dated November 20, 2023. Garcia's testimony was credible in all aspects.

10. Garcia and other investigators collectively conducted a total of 46.50 hours of surveillance on respondent's daily activities in August, September, and October 2023. Garcia compiled recordings of the surveillance and edited them into one 33 minute and 55 second video.

11. Relevant to respondent's IDR application, Garcia reported the following:

- a) On September 22, 2023, Garcia saw respondent throw away trash.
- b) On October 16, 2023, Garcia again saw respondent throw away trash, and jog back to her residence after speaking with an unknown occupant of a vehicle. Later that day, Garcia observed respondent driving to a department store and, exiting the vehicle and opening the driver's side passenger door, lifting a small child out of the vehicle. Garcia again saw respondent pick up the child and hold her before bending down to put the child down. Exiting the store, another investigator saw respondent carrying two bags. Later that day, Garcia saw respondent empty her vacuum into the trash container several times.
- c) On October 19, 2023, Garcia and other investigators observed respondent holding items in her left hand.
- d) On October 26, 2023, Garcia saw respondent lifting a bike into the bed of a truck and standing on the bed to move the bike. She lifted a second bike into the bed of the truck with the assistance of a male. Respondent positioned the bikes lying down, hopped out of the truck, and closed the tailgate of the truck. In front of an elementary school, Garcia saw respondent standing in the bed of the truck and throwing helmets to the ground. Respondent jumped out of the bed, bent over and picked up a helmet, put the helmet on her head, and picked up another helmet as well as a bag that she put around her waist. She got onto a bike, moved it forward, got off, and moved another bike. Garcia later saw respondent get on a bike and ride out of view. Another investigator observed respondent riding her bike with her husband and son, and also saw respondent running the bike uphill. Garcia saw respondent walking to visit homes and later riding the bike back home with her family. Garcia wrote that the bike ride from the elementary school to respondent's residence is approximately 2.1 miles.

Medical Evidence

12. Respondent was examined on January 4, 2024, by Nasser Heyrani, M.D., a board-certified orthopedic surgeon. Dr. Heyrani testified at hearing about his evaluation of respondent, and the report he wrote dated January 13, 2024. His report and testimony were credible in all aspects.

13. Dr. Heyrani reviewed respondent's medical history, including her past or present illnesses, diseases, or conditions; the current medications she was taking; prior hospitalizations; her physical therapy and acupuncture sessions in 2022; two magnetic resonance imaging tests (MRIs) that were performed in October and December 2022; an electromyography (EMG) performed in February 2023; and her activities of daily living. Dr. Heyrani reviewed respondent's records, including a comprehensive medical legal evaluation by Omid Haghighinia, D.C., on July 6, 2022, in which Dr. Haghighinia diagnosed respondent with "bilateral shoulder pain, lower back pain with radiculitis to the bilateral hips, bilateral wrist, and hand pain as well as bilateral knee pain."

14. Respondent informed Dr. Heyrani about her work-related history of injuries, including an injury to her knees due to restraining a combative inmate; an attack on her co-worker in which she, seeking to restrain the patient, was pinned between the patient and the wall and injured her right shoulder and right wrist; and an injury to her back while she was trying to separate two combatants. In each instance, respondent filed a report and was sent to a clinic for medical assistance.

15. Dr. Heyrani completed a physical examination on respondent, who was cooperative, alert, and oriented at the time of the examination. Dr. Heyrani made the following diagnoses:

1. Right shoulder mild rotator cuff tendinitis without any evidence of tear.
2. Left shoulder pain.
3. Right thumb pain.
4. Right knee pain with the following MRI findings: mild sprain of the anterior cruciate ligament, great one tear of the posterior horn of the lateral meniscus, baker cyst, degenerative changes involving the patellofemoral and medial compartments, grade II chondromalacia.
5. Left knee pain with the following MRI findings: with mild joint effusion, increased signal within posterior horn of the medial meniscus without any evidence and partial tear of lateral collateral ligament.
6. Lower back pain with left lower extremity radiating pain, normal MRI, and EMG of the bilateral lower extremities.

16. Based on his examination of respondent and his review of the MRI's and EMG, which revealed "benign findings" and/or "unremarkable MRI findings," Dr. Heyrani does not believe that respondent presented an orthopedic impairment that rises to the level of substantial incapacity. In reviewing Garcia's surveillance video, Dr. Heyrani noted "the discrepancy between [respondent's] symptoms as well as lack of objective diagnostic findings referenced to above." And Dr. Heyrani stated that respondent was not "putting [forth] her best effort during grip strength of the right

hand and overall description of her symptoms” during the physical examination. Dr. Heyrani wrote that respondent was “exaggerat[ing] and catastrophizing during both the history and physical examination.”

Respondent’s Evidence

17. Respondent testified credibly about her work as a psychiatric technician at Patton and the injuries she sustained.

18. Testifying that she and other psychiatric technicians are the “first line of defense” at Patton, which houses the “criminally insane,” respondent was required to protect herself and her patients when they become dangerous to themselves. Respondent referred to the injuries she sustained in subduing patients for their safety, including her knees when needing to drop to the concrete floor to pin a patient to the ground, and her wrists and shoulders when needing to pin patients against the wall. Respondent testified that her back hurts when sleeping.

19. Respondent has post-traumatic stress disorder from her work at Patton and suffers from nightmares. And, believing that she “can do it” as she was young and strong, respondent “left it alone” and did not say anything about her pain or injuries until she could no longer keep her pain to herself.

20. Respondent continues to have flareups on the right side of her body, but she still tries to remain active because she does not want to “give up.” Respondent also does not want to take medication “all the time.”

21. Respondent worked at Casa Colina Hospital and Centers for Healthcare in Pomona but quit after approximately six months. She is currently unemployed.

LEGAL CONCLUSIONS

1. The applicant for a benefit has the burden of proof to establish the right to the claimed benefit. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) The standard of proof is a preponderance of the evidence. (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 she is substantially unable to perform her usual duties. (*Mansperger v. Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 876.)

4. The evidence has demonstrated that respondent has some orthopedic conditions that cause her pain and discomfort. (Factual Findings 15 and 18.) However, respondent has not demonstrated by a preponderance of the evidence that those conditions have incapacitated her ability to carry out the normal duties of a psychiatric technician (safety). (Factual Findings 7, 8, 11, and 16.) Respondent has not shown that she is substantially unable to perform her usual duties in the position. Thus,

respondent's IDR application on the basis of her orthopedic conditions must be denied.

ORDER

The application by respondent Jessica V. Hernandez-Garnica for industrial disability retirement based on orthopedic conditions (lower back, bilateral knees, bilateral shoulders, and right thumb/wrist) is denied.

DATE: **08/20/2025**



[Mario Choi \(Aug 20, 2025 15:38:52 PDT\)](#)

MARIO M. CHOI

Administrative Law Judge

Office of Administrative Hearings