

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:**

**JEFFREY A. MCGLONE and CALIFORNIA STATE PRISON
SACRAMENTO, CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION, Respondents**

Agency Case No. 2024-0748

OAH No. 2025030019

PROPOSED DECISION

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on August 14, 2025, in Sacramento, California.

Bryan Delgado, Attorney, represented the California Public Employees' Retirement System (CalPERS).

Jeffrey A. McGlone (respondent) appeared and represented himself.

There was no appearance by or on behalf of California State Prison, Sacramento (CSPS), California Department of Corrections and Rehabilitation (CDCR). A notice of

hearing was properly served on CDCR. Consequently, this matter proceeded as a default against CDCR under Government Code section 11520, subdivision (a).

Evidence was received, the record closed, and the matter submitted for decision on August 14, 2025.

ISSUE

Whether respondent was substantially incapacitated from the performance of his usual and customary duties as a Correctional Officer at the time he applied for Industrial Disability Retirement (IDR).

FACTUAL FINDINGS

Jurisdictional Matters

1. CalPERS is the state agency responsible for administering retirement benefits to eligible employees. (Gov. Code, § 20000 et seq.) At the time respondent filed his application for IDR, he was employed by CDCR as a Correctional Officer at CSPA. By virtue of his employment, respondent is a state safety member of CalPERS subject to Government Code sections 21151, 21154, and 21156.

2. On January 22, 2024, respondent submitted an application for IDR. The application claimed disability on the basis of orthopedic (right shoulder, elbow, and knee) and podiatry (right ankle) conditions.

3. CalPERS obtained medical reports concerning respondent's orthopedic and podiatry conditions. After reviewing the reports, in a letter dated July 30, 2024,

CalPERS denied respondent's application for IDR. The letter stated that CalPERS determined respondent's orthopedic and podiatry conditions did not render him substantially incapacitated from performing his usual duties as a Correctional Officer. The letter also advised respondent of his right to appeal CalPERS's determination.

4. On August 19, 2024, respondent appealed CalPERS's denial of his IDR application. On February 6, 2025, Sharon Hobbs, in her official capacity as Chief of CalPERS's Disability and Survivor Benefits Division, signed and thereafter filed the Statement of Issues for purposes of the appeal. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Duties of a Correctional Officer

5. CalPERS submitted two documents explaining respondent's job duties: a "California State Prison-Sacramento Job Description" (Job Description) and a "Physical Requirements of Position/Occupational Title" (Physical Requirements). The Job Description states that Correctional Officers provide security and direct inmates within the institution, observe inmate conduct to prevent disturbances or escapes, conduct searches of inmate cells, and patrol within the institution for evidence of rule violations. A Correctional Officer may be required to use physical force and weapons to maintain discipline among inmates. They may also be required to transport inmates within and between CDCR facilities.

6. The Physical Requirements describe the frequency of a Correctional Officer's tasks. A Correctional Officer is physically required to complete activities of movement, including: sitting, standing, and walking (constantly); bending at the neck and waist (frequently); and climbing, crawling and running (occasionally).

Respondent's Injury

7. On September 5, 2022, respondent injured his right shoulder, elbow, knee, and ankle after falling to the ground during a physical altercation with a combative inmate. He was unable to finish his shift and went to Mercy Hospital of Folsom. X-rays of his right shoulder and elbow were taken, which revealed no acute fractures or dislocations.

CalPERS Evidence

TREATMENT AND SURGERY

8. On September 21, 2022, respondent attended a follow-up appointment with his primary care physician, Evelyn Fainsztein, M.D. Dr. Fainsztein prescribed respondent Naproxen and recommended he participate in physical therapy and alternate applying ice and heat to treat his pain. She also referred him for a magnetic resonance imaging (MRI) examination of his right shoulder and right knee, which revealed no significant abnormalities.

9. In 2022, respondent completed 12 weekly physical therapy sessions for his right shoulder, elbow, upper arm, knee, and ankle, which he did not find beneficial. In 2023, he completed 12 weekly acupuncture sessions for his right shoulder, elbow, upper arm, knee and ankle, which he did not find beneficial.

10. In June 2023, Masoud Ghalambor, M.D., performed a right ankle extensive arthroscopy and debridement and a subtalar joint arthroscopy and debridement, and repaired a defect on the talus bone in respondent's right ankle. Respondent did not find the surgical procedure beneficial. Following the surgery, Dr.

Ghalambor recommended respondent participate in weekly physical therapy sessions with Orthopedic Specialists of Sacramento, which respondent found to be beneficial.

11. From 2023 to 2024, respondent received three cortisone injections in his right ankle which he found to be beneficial. In 2024, he received a cortisone injection in his right shoulder, which he also found to be beneficial. Respondent was released from Dr. Ghalambor's care in January 2024 with no further treatment recommendations. He remains under Dr. Fainsztein's care.

CALPERS INVESTIGATION

12. Yolanda Clive is a CalPERS Investigator. She assisted CalPERS Investigator Pravneel Sharma in surveilling respondent on seven different occasions in March and April 2024. They observed and filmed respondent running errands, working in and around his garage, and taking his children to school. A compilation of the surveillance footage was received in evidence at hearing. It depicts respondent pushing a grocery cart, loading items into and out of his truck, and slowly jogging in a school parking lot.

INDEPENDENT MEDICAL EVALUATIONS

13. CalPERS retained Nasser Heyrani, M.D., to conduct an Independent Medical Evaluation (IME) of respondent. Dr. Heyrani earned a bachelor's degree in psychobiology at the University California, Los Angeles (UCLA). He earned his doctorate at the UCLA David Geffen School of Medicine. He is certified by the American Board of Orthopedic Surgeons, and he has been performing IMEs for CalPERS for approximately three years.

14. Dr. Heyrani performed respondent's IME in Roseville, California, on June 15, 2024, using the CalPERS substantial incapacity standard. He obtained respondent's

history and symptomology, reviewed his medical records, and physically examined respondent, and reviewed the surveillance footage obtained by the CalPERS investigators. He issued an IME report dated July 10, 2024, and testified at hearing about his findings, consistent with his IME report.

15. Respondent told Dr. Heyrani he had constant sharp and aching pain in his right shoulder, which worsens when he lifts objects overhead, brushes his teeth, and puts on a seatbelt. He said he had intermittent aching and sharp pain in his upper right arm, and intermittent sharp pain in his right knee, which worsens when he runs, walks, stands, sits, and squats. He also reported significant difficulties with multiple activities of daily living, including standing, walking, and getting out of bed.

16. During the physical examination, Dr. Heyrani noted that respondent walked with a slight limp, but he did not require any assistive devices. He had normal range of motion in his cervical spine and normal strength in the upper extremity muscle group, including his biceps and triceps, although he reported tenderness in the right shoulder when Dr. Heyrani applied pressure to it. Dr. Heyrani noted decreased range of motion in the right shoulder on the forward flexion test, during which respondent was instructed to raise his right arm upward. He also noted that the right shoulder was slightly weaker than the left.

17. Dr. Heyrani found respondent to have normal range of motion in his right elbow, wrist and hand. His grip strength was greater in the right hand than the left. He had normal range of motion in the lumbar and thoracic spine. Dr. Heyrani found no obvious deformities and normal range of motion in respondent's right knee, but respondent reported moderate tenderness when Dr. Heyrani applied pressure to the area over the patellar tendon. Dr. Heyrani observed no obvious deformities in the right foot and ankle, although respondent reported tenderness when Dr. Heyrani

applied pressure to the subtalar joint. Dr. Heyrani explained that his evaluation was limited by respondent's subjective complaints of pain, after which Dr. Heyrani stopped applying pressure or moving respondent's extremities.

18. At the conclusion of the IME, Dr. Heyrani diagnosed respondent with: (1) acute right shoulder pain; (2) acute right elbow pain; (3) acute right knee pain consistent with patellofemoral syndrome; and (4) right ankle subtalar impingement. He acknowledged respondent may experience some pain when performing some of his more strenuous duties as a Correctional Officer. However, under the CalPERS standard, pain or difficulty in performing certain tasks is insufficient to establish that a person is substantially incapacitated. Dr. Heyrani explained that "based on the history, physical examination findings, as well as MRI imaging of the right shoulder, elbow, upper arm and right knee, [he did] not find any level of impairment that arises to the level of substantial incapacity."

19. CalPERS also retained Sean Dougherty, D.P.M., to perform an IME of respondent's right ankle and foot. Dr. Dougherty earned a bachelor's degree in integrative biology from the University of California, Berkeley. He earned his doctorate from the California School of Podiatric Medicine. He is certified by the American Board of Podiatric Medicine and the American Board of Foot and Ankle Surgery.

20. Dr. Dougherty performed respondent's IME in Sacramento on June 22, 2024, using the CalPERS substantial incapacity standard. He obtained respondent's history and symptomology, reviewed his medical records, and physically examined respondent's right ankle and foot. Respondent reported continued pain in his ankle with prolonged walking or standing and when Dr. Dougherty performed inversion and eversion muscle testing. Respondent told Dr. Dougherty he was unable to perform any high-impact activities. Dr. Dougherty noted respondent's right ankle was swollen and

had reduced range of motion compared to the left, which he explained is common after surgery. However, he found respondent's strength in both feet to be within normal limits.

21. Ultimately, Dr. Dougherty concluded that respondent suffered a high-grade right ankle sprain which had already been repaired by Dr. Ghalambor. He found that respondent's subjective complaints of pain were simply inconsistent with the available objective medical evidence. Consequently, he determined respondent is not substantially incapacitated based on a podiatry condition.

SUPPLEMENTAL INDEPENDENT MEDICAL EVALUATIONS

22. After submitting their IME reports, both Dr. Heyrani and Dr. Dougherty were provided with five pages of additional medical records from Dr. Fainsztein and a 28-page Qualified Medical Evaluation (QME) report prepared by Laura Sciaroni, M.D., and asked if the materials changed their opinion that respondent was not substantially incapacitated. Both doctors issued supplemental reports stating that neither the additional records nor the QME report changed their opinion that respondent's physical limitations do not rise to the level of a substantial incapacity.

Respondent's Evidence

23. Respondent testified at hearing. He worked as a Correctional Officer for 15 years before his injury. He has worked hard to rehabilitate himself, but he is not fully recovered, and he believes his continued limitations could mean the difference between life and death. Due to the pain in his right knee and ankle, he is unable to run, which he might be required to do, potentially over uneven ground, in the event of a prison emergency. Respondent has a high pain tolerance, but he feels the pain in his right shoulder would prevent him from being able to defend himself and his

colleagues were he to be involved in another physical altercation, and that he would be a liability if he were to return to work in his present condition.

24. Respondent admits he is depicted in the surveillance video footage jogging, taking his children to school, and loading items in and out of his truck, but does not believe any of activities depicted were strenuous. Two years after surgery he continues to experience pain in his ankle. Neither surgery nor time have helped him regain full strength and range of motion. According to respondent, all the medical records and IME reports clearly demonstrate that something is wrong with him, and he questions the doctors' opinions that his pain and reduced range of motion in his shoulder and ankle are not substantially incapacitating.

Analysis

25. Respondent bears the burden of proving, by competent medical evidence, that he was substantially incapacitated from the performance of his usual and customary duties as a Correctional Officer at the time he applied for IDR. When all the evidence is considered using the CalPERS substantial incapacity standard, respondent did not meet his burden, and his appeal must be denied.

26. Respondent correctly points out that the medical experts in this case agree he is compromised by the injuries received during a 2022 altercation with a combative inmate. He continues to experience pain in his right shoulder, knee, and ankle. Dr. Heyrani noted reduced range of motion in the shoulder and Dr. Dougherty noted reduced range of motion in the ankle. Respondent's expressed concern for his ability to protect himself and his colleagues in an emergency is admirable. This Decision should not be misinterpreted as an indication that respondent's discomfort is not real or that he is embellishing its severity. However, under the applicable CalPERS

standard, pain, as well as physical limitations associated with pain, are insufficient to establish that a person is substantially incapacitated. Respondent had the burden of proving his substantial incapacity by competent medical evidence. He did not introduce any. Consequently, his appeal must be denied.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. An applicant seeking service-connected disability retirement has the burden of proving his eligibility for such benefits. (*McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.) Although pension legislation must be liberally construed in favor of the applicant, this liberal construction "does not relieve a party of meeting the burden of proof by a preponderance of the evidence." (*Glover v. Bd. of Retirement* (1989) 214 Cal.App.3d 1327, 1332.) A preponderance of the evidence means "the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed." (*People v. Miller* (1916) 171 Cal. 649, 652.)

Applicable Laws

2. Any state safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability. (Gov. Code, § 21151, subd. (a).) Disability as a basis of retirement means "disability of permanent or extended uncertain 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 employees the member, on the basis of competent medical opinion." (Gov. Code, § 20026.)

3. Government Code section 21154 provides in part:

The application shall be made only (a) when a 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. . . .

4. According to Government Code section 21156, subdivision (a)(1), "[i]f the medical examination and other available information show to the satisfaction of the board . . . 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."

USUAL AND CUSTOMARY DUTIES

5. An applicant must show a substantial inability to perform their usual duties based on competent medical evidence. (Gov. Code, § 20026; *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876.) "Usual Duties" are based on the duties of the last job classification held and applicable law. (*Beckley v. Bd. of Administration* (2013) 222 Cal.App.4th 691, 699-700 [California Highway Patrol (CHP) officer assigned to public affairs role had to be capable of carrying out complete range of tasks required of CHP officers under Vehicle Code section 2268].)

6. The inability to perform a rarely performed, albeit necessary, duty of a position does not automatically render an applicant disabled. (*Mansperger v. Public Employees' Retirement System, supra*, 6 Cal.App.3d at pp. 876-877 [fish and game

warden was not incapacitated where he was able to do all normal activities except lift and carry heavy objects, tasks which rarely occurred]; *Hosford v. Bd. of Administration* (1978) 77 Cal.App.3d 854 [CHP sergeant with physical limitations was not incapacitated where the physically demanding activities of his job were performed much less often by someone in his supervisory role].) However, in certain public safety positions, an uncommon activity can be a "usual duty" if the employee "must be capable of and prepared for the worst every day." (*Thelander v. City of El Monte* (1983) 147 Cal.App.3d 736, 742; *Beckley v. Bd. of Administration, supra*, 222 Cal.App.4th at pp. 600-700.)

SUBSTANTIAL INCAPACITY

7. An applicant's disability must be presently existing and cause an inability to perform, rather than an increased risk of future injury or aggravation. (*In the Matter of the Application for Reinstatement from Industrial Disability Retirement of Willie Starnes* (Precedential Decision 99-03); *Wolfman v. Bd. of Trustees* (1983) 148 Cal.App.3d 787, 791 [applicant's disability "was not merely a prospective probability, but a medical certainty"].) Additionally, mere difficulty in performing certain tasks is not enough to support a finding of disability. (*Hosford v. Bd. of Administration, supra*, 77 Cal.App.3d at p. 863; *Mansperger v. Public Employees' Retirement System, supra*, 6 Cal.App.3d at pp. 876-877.) And discomfort, which may make it difficult to perform one's duties, is insufficient to show permanent incapacity from performance of one's position. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207, citing *Hosford v. Bd. of Administration, supra*, 77 Cal.App.3d at p. 862.)

Determination

8. Based on the Factual Findings and Legal Conclusions as a whole, respondent did not prove by competent medical evidence that he was substantially

incapacitated from the performance of his duties as a Correctional Officer with CDCR at the time he applied for IDR. Consequently, his appeal is denied.

ORDER

The appeal of respondent Jefferey A. McGlone is DENIED.

DATE: September 10, 2025

Matthew Block

MATTHEW S. BLOCK

Administrative Law Judge

Office of Administrative Hearings