

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 Disability Retirement of:

**ALICIA R. DEAL and CALIFORNIA DEPARTMENT OF MOTOR
VEHICLES, Respondents**

Agency Case No. 2024-0980

OAH No. 2025020896

PROPOSED DECISION

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on August 27, 2025, by videoconference from Sacramento, California.

Austa Wakily, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Alicia R. Deal (respondent) appeared telephonically and represented herself.

There was no appearance by or on behalf of the California Department of Motor Vehicles (DMV). A Notice of Hearing was properly served on the DMV. Consequently, this matter proceeded as a default against the DMV under Government Code section 11520, subdivision (a).

Evidence was received, the record closed, and the matter submitted for decision on August 27, 2025.

ISSUE

Whether respondent was substantially incapacitated from the performance of her usual and customary duties as a motor vehicle representative for the DMV because of orthopedic and rheumatological conditions at the time she applied for disability retirement (DR).

FACTUAL FINDINGS

Jurisdictional Matters

1. CalPERS is the state agency responsible for administering retirement benefits to eligible employees. (Gov. Code, § 20000 et seq.) Respondent was employed by the DMV as a motor vehicle representative. By virtue of her employment, respondent is a state miscellaneous member of CalPERS subject to Government Code section 21150. Respondent has the minimum service credit necessary to qualify for retirement.

2. On May 6, 2024, respondent applied for service pending DR based on her orthopedic (back) and rheumatological (inflammatory polyarthritis) conditions. She retired for service effective March 7, 2024.

3. CalPERS obtained medical reports concerning respondent's orthopedic and rheumatological conditions. In a letter dated September 18, 2024, CalPERS denied respondent's application for DR on the basis of her orthopedic condition. The letter

stated that after a review of the medical evidence submitted, CalPERS found respondent's orthopedic condition did not render her substantially incapacitated from performing her usual duties as a motor vehicle representative. The letter also stated that the medical evidence received of respondent's rheumatological condition was insufficient to determine if it rendered her substantially incapacitated.

4. On October 10, 2024, respondent appealed CalPERS's denial of her DR application. On February 13, 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 Motor Vehicle Representative

5. CalPERS submitted two documents explaining respondent's job duties: a "Physical Requirements of Position/Occupational Title" (Physical Requirements) and a "Position Duty Statement" (Duty Statement). The Physical Requirements describe the frequency of a motor vehicle representative's tasks. A motor vehicle representative's job requires the following: sitting, using a computer, and interacting with members of the public (constantly); standing, walking, and reaching above and below the shoulder (occasionally); and bending at the neck and waist (infrequently).

6. The Duty Statement describes the duties a motor vehicle representative is expected to perform. Specifically, a motor vehicle representative: (1) interprets, applies, and explains provisions of the California Vehicle Code; (2) furnishes the public with and explains the use of DMV forms; (3) verifies the identity of applicants for licensure and determines whether they possess the legal documents for licensing; (4)

responds to inquiries about licensure and vehicle registration and ownership; (5) administers vision tests; and (6) scores driver license examinations to determine if the applicant possesses the requisite knowledge for a driver license.

Respondent's Reported Symptomology and Diagnoses

7. Respondent suffers from chronic pain in her lower back, with associated pain in her ankles, feet, hips, and knees. If she sits for too long, she occasionally experiences numbness in the right thigh near the knee. If she stands too long, the pain in her lower back worsens. She has also been diagnosed with inflammatory polyarthritis. As a result, respondent has difficulty with bathing, standing, walking, and driving. She also has difficulty getting restful and restorative sleep.

CalPERS Evidence

DR. HENRICHSEN IME

8. CalPERS sent respondent for an Independent Medical Evaluation (IME) with Robert Henrichsen, M.D. Dr. Henrichsen received his medical degree from Loma Linda University in 1967. He received his Orthopedic Board Certification in 1974 and has been a fellow of the American Academy of Orthopedic Surgeons since 1977. He is a member of several professional organizations, including the California Orthopedic Association and the American Association of Orthopedic Surgeons. Dr. Henrichsen maintained a private practice in Auburn, California, from 1973 to 2011.

9. Dr. Henrichsen performed respondent's IME at his office in Rancho Cordova, California, on August 20, 2024, using the CalPERS substantial incapacity standard. He obtained respondent's history and symptomology, reviewed her available medical records, and physically examined respondent. He then issued an IME report,

dated August 20, 2024, and testified at hearing about his findings, consistent with his report.

10. On the date of the IME, respondent was 50 years old. She is five feet tall, and her stated weight was 197 pounds. She told Dr. Henrichsen she began experiencing lower back pain in 2016 which has worsened over time. According to respondent, the pain is "severe" and limits her mobility. She also experiences pain in her knees and feet. She told Dr. Henrichsen she has also been diagnosed with inflammatory polyarthritis as an autoimmune disease.

11. Respondent explained that her job at the DMV required frequent reaching at or above shoulder level, frequent standing, bending, and twisting, occasional stooping, pulling and kneeling, and infrequent walking. She last worked in 2023, when her rheumatologist removed her from work. She used to enjoy hiking and playing with her granddaughter, but she cannot do either anymore due to her limited mobility. The pain in her lower back makes it difficult to sleep. As a result, she has experienced difficulty concentrating, fatigue, and depression. She also told Dr. Henrichsen that her autoimmune disease gives her "brain fog."

12. Dr. Henrichsen put respondent through a series of warm-up exercises before proceeding with the physical examination. He found her to have adequate strength when standing on her heels and toes, and she walked with a slow but normal tandem heel-to-toe gait. She was able to squat 70 percent of normal, which is common for people her age. Neither knees nor ankles had any evidence of arthritis, although she reported pain when bending at the knees. Respondent had normal strength in both hips and the hip joints appeared normal, although she reported pain and limited motion when standing as opposed to sitting.

13. Dr. Henrichsen had respondent twist her upper body back and forth. She had limited range of motion in her spine, but none of her spine motions produced radicular pain or sciatic nerve irritation. Dr. Henrichsen had respondent straighten and raise both her legs while seated and while lying down. She was able to do so while seated. However, while lying down, she was hardly able to lift her legs at all. Dr. Henrichsen attributed this to a lack of effort, and believes it is likely her complaints of pain were somewhat exaggerated.

14. On September 5, 2024, Dr. Henrichsen was provided with an MRI summary of respondent's lumbar spine which was obtained on November 20, 2021. The four upper levels of the lumbar spine were normal, although the lowest level displayed degenerative disc disease. Dr. Henrichsen explained that a finding of degenerative disc disease is common as people age. He also diagnosed respondent with psoriasis and noted a reported history of inflammatory polyarthritis. However, he concluded that the conditions do not render respondent substantially incapacitated from the performance of her duties as a DMV motor vehicle representative. In his IME report, he wrote, in part:

There is a high amount of subjective symptoms with difficulty walking, difficulty doing the dishes, and not being very functional in her home. However, her objective evaluation demonstrates that she has markedly limited range of motion of her spine; she does not have acute spasms, there is no radiculopathy, she has no evidence of effusion of knees or ankles; hip, knee and ankle motion is reasonable and there was no evidence of any radicular type residuals, such as, changes in sensation and provocative

maneuvers did not reproduce radicular-like symptoms. Therefore, based on the information I have available of the records and my examination, including her occupational duty statement, my assessment is that because of the lack of reasonable objective abnormal findings, she does not have orthopedic or low back disorder to determine that she has substantial incapacity.

DR. ANDERSON IME

15. CalPERS also sent respondent for an IME with Scott Anderson, M.D. Dr. Anderson received his medical degree from the University of Texas Southwestern Medical School at Dallas. He is certified in rheumatology, internal medicine, and geriatrics by the American Board of Internal Medicine. In addition to his own practice, he serves as a Clinical Professor of Medicine at the University of California at Davis Medical School.

16. Dr. Anderson performed respondent's IME at his office in Sacramento, California on November 15, 2024, using the CalPERS substantial incapacity standard. He obtained respondent's history and symptomology, reviewed her available medical records, and physically examined respondent. He then issued an IME report, dated November 15, 2024, and testified at hearing about his findings, consistent with his IME report.

17. Respondent told Dr. Anderson she had been experiencing blurred vision, joint pain, undesired weight gain, muscle cramps, and pain in her lower back, hips and buttocks, difficulty with memory, difficulty thinking clearly, chronic fatigue, skin rash, and easy bruising.

18. Respondent told Dr. Anderson the pain in her lower back was attributable to psoriatic arthritis. She explained she had been prescribed Norco, and she was also receiving infusions of bioequivalent drug to Humira. She told Dr. Anderson that the combination of pain in her lower back and occasional pain in her left knee and right elbow would preclude her from returning to work at the DMV on a regular basis, in that she would have difficulty using printers, scanning documents, reading, and working with the public.

19. During the physical examination, Dr. Anderson noted respondent appeared to have mild psoriasis on her elbow and chest. However, there were no disfiguring lesions in the visible area such as the face. Respondent's hands had normal digital alignment. When Dr. Anderson touched her hands, he did not detect any thickening in the lining of her joints, and she had full range of motion in both hands and wrists. There were no rheumatoid nodules present. Respondent had full range of motion in her elbows, shoulders, hips, knees and ankles. He did not detect any ligament instability. In his IME report, Dr. Anderson wrote that "there is no inflammation and full painless range of motion of both upper and lower extremities."

20. Dr. Anderson found respondent's spine to generally be in good condition, except for the lower portion of the spinal column. When he rotated respondent's legs, she reported tenderness in the sacroiliac joints, which are the joints between the hip and the pelvis. At hearing, Dr. Anderson explained that sacroiliac joint pain can be affected by psoriasis and can be very uncomfortable. However, it can be treated with medication and does not typically render a person substantially incapacitated.

21. Dr. Anderson acknowledged respondent appears to suffer from psoriasis and psoriatic arthritis in her sacroiliac joints. However, he did not see any evidence of

inflammatory polyarthritis, and he does not believe that the existing conditions render respondent substantially incapacitated from the performance of her duties as a DMV motor vehicle representative. In his IME report, he reasoned, in part:

The existence of psoriasis is a skin problem as noted, but I did not see evidence of inflammatory polyarthritis. The hands and upper extremity joints have normal alignment with no inflammation or thickening of joint tissue. Full range of motion is noted of intrinsic joints of hands, wrists, elbows, shoulders, hips, knees and feet. There is no tendon insertion pathology to suggest enthesopathy, sometimes seen in psoriatic arthritis. We are left with some sacroiliac joint tenderness. This deserves treatment but has not resulted in decreased range of motion. It could be managed with medication and an ergonomically correct office environment. Therefore, she is not substantially incapacitated.

Respondent's Evidence

22. Respondent submitted numerous Kaiser Permanente medical records and testified at hearing. She has dealt with lower back pain for many years. She was initially diagnosed with chronic low back pain with lumbar disc degeneration and lumbar spondylosis. However, in October 2023, she also began feeling pain in her hips and feet. The pain was usually worse in the morning and took approximately three hours to improve. Respondent began having difficulty walking after making the 45-minute drive to and from work. She received pain-killing injections in her sacroiliac

joints on March 28, 2024, but the benefit from the injections only lasted for several days. She also began to develop rashes, which resulted in a diagnosis of psoriasis.

23. Respondent's pain and rashes persisted for several months. In July 2024, she was diagnosed with chronic low back pain with lumbar radiculopathy. She was also referred to the Kaiser Permanente rheumatology department, where she was diagnosed with inflammatory polyarthritis.

24. Respondent started receiving Amjevita injections in August 2024, but they caused her nausea, headaches, fatigue, and an injection site reaction. She then began receiving intravenous infusions of Inflectra, which were not beneficial. She is presently receiving Cosentyx injections and is also prescribed prednisone. However, on a scale of 1 to 10, with 1 being no pain at all and 10 being the worst pain she has ever felt, respondent rates the pain she is in each day as 7 or 8. In March 2025, she was diagnosed with bursitis, or inflammation, of the left and right trochanteric bursa, a fluid-filled sac around the hip joint.

25. Respondent asked her supervisor to limit her to certain tasks so she could periodically rest her back at work. He initially agreed but was unable to accommodate her in the long term.

Analysis

26. Respondent bears the burden of proving, by competent medical evidence, that she was substantially incapacitated from performing her usual and customary duties as a motor vehicle representative at the time she applied for DR. When all the evidence is considered, respondent did not meet her burden.

27. None of respondent's physicians testified at hearing. The medical records received in evidence include several different diagnoses, most of which are undisputed. Respondent suffers from chronic low back disease, psoriasis and inflammation and pain in her sacroiliac joints. Those diagnoses are consistent with Dr. Henrichsen's findings following respondent's IME.

28. Respondent's medical records also include a diagnosis of inflammatory polyarthritis, which Dr. Anderson found no evidence of during the IME. Even assuming, without deciding, that a diagnosis of inflammatory polyarthritis is appropriate in respondent's case, it nonetheless fails to establish that she is substantially incapacitated. Notably, Dr. Anderson found respondent to have "full range of motion" in the "intrinsic joints of [her] hands, wrists, elbows, shoulders, hips, knees and feet." While he acknowledged respondent appears to have tenderness in the sacroiliac joints, he persuasively explained that it can appropriately be treated with medication and an ergonomically correct office environment.

29. Respondent testified that she is in severe, debilitating pain every day. That testimony is simply inconsistent with the objective findings of both Dr. Henrichsen and Dr. Anderson. Moreover, under the applicable CalPERS standard, discomfort or difficulty performing certain tasks is insufficient to establish substantial incapacity. Consequently, respondent's appeal must be denied.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. An applicant seeking service-connected disability retirement has the burden of proving her 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. Respondent seeks disability retirement pursuant to Government Code section 21150, subdivision (a), which provides, any state miscellaneous member “incapacitated for the performance of duty shall be retired for disability . . . if . . . she is credited with five years of state service, regardless of age, . . .”

3. 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.)

4. 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. . . .

5. 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

6. 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].)

7. 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

8. 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

9. Based on the Factual Findings and Legal Conclusions as a whole, respondent failed to prove by competent medical evidence that she was substantially incapacitated from the performance of her duties as a DMV motor vehicle representative at the time she applied for DR. Consequently, her appeal is denied.

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ORDER

The appeal of respondent Alicia R. Deal is DENIED.

DATE: September 22, 2025

Matthew Block

MATTHEW S. BLOCK

Administrative Law Judge

Office of Administrative Hearings