

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:**

REGINALD DALTON

and

**CALIFORNIA STATE PRISON, SACRAMENTO, CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION,
Respondents**

Agency Case No. 2023-0890

OAH No. 2024020086

PROPOSED DECISION

Patrice De Guzman Huber, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 27 and August 27, 2025, from Sacramento, California.

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

Reginald Dalton (respondent) appeared and represented himself.

There was no appearance on behalf of respondent California State Prison, Sacramento (CSP-Sacramento), California Department of Corrections and Rehabilitation (CDCR). The matter proceeded as a default proceeding pursuant to Government Code section 11520 as to CDCR only.

Evidence was received on January 27, 2025. The record was held open for respondent to submit additional exhibits by February 10, 2025. Respondent submitted additional exhibits, which were marked as Exhibits A and B. On February 14, 2025, complainant objected to the admission of Exhibits A and B. The record closed on February 19, 2025.

On March 14, 2025, the record was reopened to allow the parties to address Exhibits A and B. Further hearing was scheduled on August 27, 2025. On the same date, the record closed and the matter submitted for decision.

ISSUE

At the time of his industrial disability retirement (IDR) application, was respondent substantially incapacitated from performing his usual and customary duties as a Materials and Stores Supervisor I for CDCR at CSP-Sacramento on the basis of an orthopedic condition in his lower back?

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent was a Materials and Stores Supervisor I for CDCR at CSP-Sacramento. By virtue of his employment, respondent is a state safety member of CalPERS subject to Government Code section 21151. On January 30, 2023, respondent signed and thereafter submitted an IDR application to CalPERS. In the application, respondent claimed disability on the basis of "lower back pain."

2. By letter dated August 16, 2023, CalPERS denied respondent's IDR application. The denial was based on CalPERS's determination that respondent was not substantially incapacitated from performing his usual and customary duties as a Materials and Stores Supervisor I at the time he filed the application.

3. By letter dated September 8, 2023, respondent appealed CalPERS's denial of his IDR application. On January 29, 2024, Sharon Hobbs, Chief of CalPERS's Disability and Survivor Benefits Services Division, in her official capacity, signed and thereafter filed a 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.

Materials and Stores Supervisor I Duties

4. A Materials and Stores Supervisor I at CSP-Sacramento may be assigned to one of three locations: the canteen, the warehouse, or the clothing room. Respondent's position was assigned to the clothing room (clothing room supervisor). At hearing, he described his duties, which primarily involved moving laundry carts. The carts are four feet by six feet and weigh approximately 300 pounds when full.

Respondent pushed and pulled carts to and from a receiving area to collect and transport linens throughout the prison. When the carts were filled, he unloaded bundles of sheets, blankets, and clothing. The bundles each weigh approximately 20 to 40 pounds. To unload the carts, respondent frequently bent at the waist to reach the bundles.

5. Parminder Grewal, a CSP-Sacramento Associate Governmental Program Analyst, completed and signed a CalPERS form, Physical Requirements of Position/Occupational Title, for respondent. In this form, Mr. Grewal described the physical demands of a clothing room supervisor. Mr. Grewal noted the position requires respondent to frequently lift or carry 26 to 50 pounds, frequently bend at the neck, frequently bend at the waist, and frequently push and pull.

Respondent's Injury, Treatment, and Symptoms

6. Respondent testified at hearing regarding his injury, treatment, and symptoms. He provided his medical records to CalPERS when he submitted his IDR application. At hearing, respondent described his visits to Drs. Weinrit, Li, Char, and Woodcox, as discussed further below.

INITIAL DIAGNOSES AND TREATMENT BY HELEN WEINRIT, M.D.

7. Respondent first became injured while on duty on September 9, 2021. He had been moving furniture for two hours and developed low back pain. The same day, Dr. Weinrit examined respondent. His symptoms included pain, swelling, and tenderness in the central lumbar spine and in the left lumbar paraspinous muscle. Dr. Weinrit diagnosed respondent with lumbar muscle strain and lumbar radiculopathy, a pinching of the nerves at the root, which can produce pain, weakness, and numbness. Following his injury, respondent filed a workers' compensation claim.

8. Between September 2021 and October 2022, respondent saw Dr. Weinrit 29 times. At each visit, Dr. Weinrit confirmed respondent's diagnoses. She was aware that respondent was assigned to the clothing room and placed him on modified duty. Dr. Weinrit prohibited respondent from bending at the waist or twisting at the spine, and imposed varying weight limitations on lifting, carrying, pushing, and pulling of no more than 5 to 25 pounds. She also attempted various treatment modalities including physical therapy, chiropractic treatment, acupuncture, and medication.

9. Respondent testified at hearing. He cannot meet the physical requirements of his position, and, according to him, CSP-Sacramento was unable to accommodate his work restrictions. Respondent last worked as a clothing room supervisor for CDCR in May 2022.

EVALUATION BY STEPHANIE LI, M.D.

10. In October 2022, respondent's primary care physician, Dr. Li, examined respondent and authored a report. She was aware that respondent was assigned to the clothing room. Respondent continued to complain of left low back pain and occasional cramping in the low back. Dr. Li found that respondent suffered from "a clinically significant left lumbar radiculopathy along the left leg with significant paresthesias in that dermatome with imaging confirmation of degenerative disc disease at that level."

11. Respondent shared Dr. Li's report with CSP-Sacramento. Respondent testified CSP-Sacramento refused to allow him to return to work, claiming he is unable to perform the essential functions of a clothing room supervisor. Based on Drs. Weinrit and Li's diagnoses and CSP-Sacramento's assertion that he cannot perform his essential functions, respondent believes he is substantially incapacitated.

EVALUATION BY DAVID CHAR, M.D.

12. On November 30, 2023, Dr. Char, a Qualified Medical Evaluator (QME), evaluated respondent with respect to his workers' compensation claim and authored a report. During his evaluation, Dr. Char physically examined respondent and reviewed his medical records. He was aware that respondent was assigned to the clothing room.

13. Dr. Char assessed respondent's physical abilities. Pre-injury, respondent was able to lift up to 75 pounds. At the time of Dr. Char's assessment, respondent was able to lift only five pounds. Post-injury, respondent can endure sitting and standing for approximately 20 minutes and walking for about a quarter mile. He needs to use a handrail when climbing stairs. During Dr. Char's physical examination, he observed "[t]enderness with palpation in the left posterior superior iliac spine and trochanter area." Dr. Char diagnosed respondent with chronic low back pain, lumbar radiculitis/radiculopathy, and multilevel degenerative disc disease, foraminal stenosis, and bilateral L5 nerve root impingement.

14. On April 16, 2024, Dr. Char authored a supplemental QME report after receiving additional information. His opinion remained the same.

EVALUATION BY LARRY WOODCOX, D.P.M.

15. On August 14, 2024, Dr. Woodcox, a QME, examined respondent with respect to his workers' compensation claim and authored a report. During his evaluation, Dr. Woodcox physically examined respondent and reviewed his medical records. He was aware that respondent was assigned to the clothing room.

16. Respondent continued to complain of pain when bending, stooping, twisting, pushing, or pulling over 25 pounds and prolonged sitting. Dr. Woodcox

observed “moderate tenderness to the lower lumbar spine with paraspinal muscle spasm” and “moderate tenderness to the left sacroiliac joint.” He also observed atrophy in respondent’s left calf and loss of the lordotic curve, or the lumbar curve. Dr. Woodcox diagnosed respondent with chronic lumbalgia, post-strain/sprain; strain/sprain in the left sacroiliac joint; and lumbar radiculitis, the inflammation of a nerve root.

Video Surveillance

17. In May 2023, CalPERS assigned Pravneel Sharma, then a CalPERS investigator, to investigate respondent’s IDR application. Mr. Sharma testified at hearing. During his investigation, he and other CalPERS investigators surveilled respondent and recorded videos of his physical activities for nine days. At the conclusion of the investigation, Mr. Sharma prepared a Report of Investigation and attached the investigators’ videos to the report. At hearing, Mr. Sharma testified the videos have been edited. Complainant produced the edited versions of the videos at hearing, which were admitted as Exhibits 12a, 12b, and 12c.

18. Exhibits 12a, 12b, and 12c cover surveillance dates of May 4, 16, 17, 22, 24, 25, and 26, 2023. The total runtime of the edited surveillance videos is 42 minutes and 42 seconds. Approximately 7 minutes and 49 seconds depict respondent using a lawnmower. Respondent spent approximately 35 seconds to bend slightly to reach the lawnmower receptacle for clippings, lift the receptacle, and empty it into a bin. Approximately 1 minute and 16 seconds of the surveillance videos depict him using a weed whacker.

19. Approximately 49 seconds show respondent cruising on what appears to be an electric bicycle, pedaling infrequently. Approximately 32 seconds depict

respondent carrying a bundle of what appear to be three sets of window blinds or fluorescent lights. He bent once to place the bundle on the ground and bent once more to pick up the bundle to place it inside a vehicle. Approximately 37 seconds of the video surveillance show respondent pulling an empty trash bin up a driveway. The balance of the videos, which totals approximately 38 minutes, shows respondent walking, standing, or sitting.

Independent Medical Evaluation (IME)

20. Following a referral from CalPERS, Anthony Francis Bellomo, M.D., authored an IME report in July 2023 and a supplemental report in March 2025 concerning his evaluation of respondent's condition and records. He has been performing IMEs for CalPERS since 2008. Dr. Bellomo is board-certified in orthopedic surgery. In 1985, he earned his medical degree and has since completed multiple residencies in orthopedic surgery. Since 2001, he has operated a private orthopedic practice. Dr. Bellomo testified at hearing. He testified at hearing consistent with his two reports.

21. The purpose of Dr. Bellomo's evaluation was to determine whether respondent suffered from an actual and present orthopedic condition which rose to the level of substantial incapacity to perform his job duties. Dr. Bellomo opined in July 2025 that respondent was not substantially incapacitated, based on his review of respondent's medical records, including the reports by Drs. Weinrit and Li, review of surveillance videos, and physical examination of respondent. During that examination, Dr. Bellomo found, among other things, no lumbar tenderness.

22. In March 2025, after reviewing Dr. Woodcox's August 2024 report stating respondent suffered from lumbar tenderness, Dr. Bellomo changed his opinion. As

discussed further below, Dr. Bellomo testified that lumbar tenderness supports a finding of substantial incapacity. As a result, he ultimately opined that respondent is presently substantially incapacitated as of the date of Dr. Woodcox's examination.

JULY 2023 ASSESSMENT

23. On July 17, 2023, respondent complained to Dr. Bellomo of pain across his lower back that extended into the back of his left hip region and down the back of his left leg. The pain was sharp, aching, throbbing, and tingling. Sitting, standing, walking, bending, lifting, and sexual activity exacerbated respondent's pain.

24. During Dr. Bellomo's physical examination of respondent, he observed "mild distress when moving about the examination table due to pain" and pain when the hip and knees were flexed. Dr. Bellomo observed respondent's gait to be within normal limits. However, he observed a diminished range of motion.

25. Dr. Bellomo did not observe lumbar tenderness or muscle spasming. He did not observe issues with sitting, supine straight leg raising, or femoral stretching. Dr. Bellomo found respondent to be neurologically intact. Dr. Bellomo ultimately diagnosed respondent with chronic lower back pain. He did not diagnose respondent with lumbar muscle strain or lumbar radiculopathy. Neither his testimony nor his report explains why his diagnosis differed from the diagnoses respondent received from Drs. Weinrit and Li.

26. During his assessment, Dr. Bellomo relied upon a job description for a Materials and Stores Supervisor I assigned to the canteen (canteen supervisor). A canteen supervisor "supervis[es] the receipt, storage, and issuance of a volume of varied canteen merchandise." A canteen supervisor frequently lifts items under 25

pounds but up to 40 pounds, occasionally carries items a short distance, and frequently pushes or pulls to stock shelves or maneuver pallet jacks in the warehouse.

27. Dr. Bellomo also relied upon the surveillance videos. He noted that respondent “was able to start and push a lawnmower on at least two occasions, bends fully at the waist on several occasions in particular to empty the lawn clippings, was also able to use a handheld hedger without difficulty in addition to riding his bicycle.” Upon concluding his assessment, Dr. Bellomo opined respondent was not substantially incapacitated to perform his duties as a Materials and Stores Supervisor I.

MARCH 2025 FURTHER ASSESSMENT

28. On March 31, 2025, Dr. Bellomo reviewed Dr. Char’s November 2023 and April 2024 reports and Dr. Woodcox’s August 2024 report. Upon review, Dr. Bellomo changed his opinion regarding respondent’s substantial incapacity. According to Dr. Bellomo, lumbar tenderness supports a finding of substantial incapacity. Based on the lumbar tenderness that Dr. Woodcox observed, Dr. Bellomo opined respondent is presently substantially incapacitated as of the date of Dr. Woodcox’s evaluation.

CalPERS’s Confirmed Denial of IDR Application

29. On July 9, 2025, after reviewing Dr. Bellomo’s subsequent report, CalPERS sent respondent a letter confirming its denial of his IDR application. Daniel Schofield, a Staff Services Manager I assigned to CalPERS’s disability section, testified at hearing. Mr. Schofield oversees staff who receive and process disability retirement applications. He confirmed that respondent filed his IDR application in January 2023 and that CDCR last compensated respondent in March 2023.

Analysis

30. The competent medical evidence establishes that respondent is substantially incapacitated from the performance of his duties as a Materials and Stores Supervisor I assigned to the clothing room. The usual and customary duties of that position include pushing and pulling laundry carts that weigh 300 pounds when full and bending frequently to load and unload bundles of linens that weigh 20 to 40 pounds each. Due to his injury, respondent experienced pain, swelling, and tenderness in his lumbar spine. He was diagnosed with lumbar radiculopathy. Based on his injury and symptoms, he was unable to perform his usual and customary duties, and Dr. Weinrit placed him on modified work duty. She restricted respondent from bending and lifting, carrying, pushing, and pulling no more than 5 to 25 pounds.

31. Based on Dr. Bellomo's review of the surveillance videos in July 2023, he opined at the time that respondent was not substantially incapacitated. He did not explain in his report or at hearing what bearing respondent's activities in the videos had on the usual and customary duties of a clothing room supervisor. Consequently, Dr. Bellomo's reliance upon the surveillance videos is given little weight.

32. However, Dr. Bellomo's ultimate opinion that respondent is substantially incapacitated from the performance of his duties as a Materials and Stores Supervisor I is persuasive. However, his setting the time of substantial incapacity to August 2024 is not credible, in light of the opinions of respondent's physicians. To be clear, none of the reports by Drs. Weinrit, Li, Char, and Woodcox addresses whether respondent is substantially incapacitated from the performance of his usual and customary duties. Consequently, this decision does not rely upon these reports for its ultimate conclusion regarding respondent's substantial incapacity.

33. However, the value of the opinions of respondent's physicians is in establishing the consistency of respondent's symptoms. Since September 2021, respondent has suffered from tenderness in his lumbar spine. That Dr. Bellomo did not observe lumbar tenderness in July 2023 appears to be an outlier and not persuasively dispositive.

34. Dr. Bellomo testified credibly that lumbar tenderness supports a finding of substantial incapacity in this case. The record establishes respondent has suffered from tenderness in his lumbar spine from the date of his injury through at least August 2024. When all the evidence is considered, respondent was substantially incapacitated from the performance of his usual and customary duties as a Materials and Stores Supervisor I, on the basis of an orthopedic condition in his lower back, when he submitted his IDR application in January 2023. Therefore, respondent's appeal must be granted.

LEGAL CONCLUSIONS

35. Respondent is applying for disability retirement pursuant to Government Code section 21151, subdivision (a), which provides, any state safety member "incapacitated for the performance of duty as a result of an industrial disability shall be retired for disability . . . regardless of age or amount of service." As the applicant, respondent bears the burden of proving by a preponderance of the evidence that he is entitled to disability retirement benefits. (*McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051; Evid. Code, § 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."].) A preponderance of the evidence means "evidence that has more convincing force than

that opposed to it." (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

36. To qualify for disability retirement, competent medical evidence must establish that at the time the applicant applied, he was "incapacitated physically or mentally for the performance of his . . . duties." (Evid. Code, § 115; Gov. Code, § 21156, subd. (a)(1); *Harmon v. Bd. of Retirement of San Mateo County* (1976) 62 Cal.App.3d 689, 697; *Glover v. Bd. of Retirement* (1980) 214 Cal.App.3d 1327, 1332.) As defined in Government Code section 20026:

"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, . . . on the basis of competent medical opinion.

37. Incapacity for the performance of duty "means the substantial inability of the applicant to perform his usual duties." (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876.) An inability to perform a function that is a remote occurrence does not establish substantial incapacity. (*Id.* at pp. 876–877.)

38. A substantial inability to perform usual duties must be measured by considering an applicant's abilities. Discomfort, which makes it difficult to perform, is insufficient to establish permanent incapacity. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207, citing *Hosford v. Bd. of Admin. of the Public Employees' Retirement System* (1978) 77 Cal.App.3d 854, 862.) "[T]he actual and usual duties of the applicant must be the criteria upon which any impairment is judged. Generalized

job descriptions and physical standards are not controlling, nor are actual but infrequently performed duties to be considered." (*In the Matter of the Application for Reinstatement from Industrial Disability Retirement of Willie Starnes and California Highway Patrol (Starnes)*, Case No. 2530, OAH No. L-1999060537, Precedential Decision 99-03.)

39. Since becoming injured in September 2021, respondent has been unable to perform his usual and customary duties including pushing and pulling laundry carts that weigh 300 pounds when full and lifting bundles of linens that weigh 20 to 40 pounds each. Respondent has consistently suffered from tenderness in his lumbar spine from the date of his injury until at least August 2024 when Dr. Woodcox examined him. According to Dr. Bellomo's persuasive testimony, lumbar tenderness supports a finding of substantial incapacity in this case. When the record is considered as a whole, competent medical evidence establishes, upon a preponderance, that respondent was substantially incapacitated from the performance of his usual and customary duties as a Materials and Stores Supervisor I, due to an orthopedic condition in his lower back, when he submitted his IDR application in January 2023. His appeal must therefore be granted.

ORDER

1. Respondent Reginald Dalton's appeal is GRANTED.
2. Respondent Reginald Dalton was substantially incapacitated from the performance of usual and customary duties as a Materials and Stores Supervisor I assigned to the clothing room at the time of his application for industrial disability retirement due to an orthopedic condition in his lower back.

3. Any dispute as to whether the disability is industrial or nonindustrial shall be resolved pursuant to Government Code section 21166.

DATE: September 25, 2025



PATRICE DE GUZMAN HUBER

Administrative Law Judge

Office of Administrative Hearings