ATTACHMENT A

THE PROPOSED DECISION

Attachment A

BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

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

SAVANNA A. DAMBACHER and COUNTY OF SHASTA,

Respondents

Agency Case No. 2024-0732

OAH Nos. 2025030131 and 2025030134

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on September 15, 2025, in Sacramento, California.

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

There was no appearance by or on behalf of Savanna Dambacher (respondent) or the County of Shasta (County). A Notice of Hearing was properly served on respondent and the County. Consequently, the matter proceeded as a default against respondent and the County under Government Code section 11520, subdivision (a).

Evidence was received, the record closed, and the matter submitted for decision on September 15, 2025.

Whether respondent was substantially incapacitated from the performance of her usual and customary duties as an Employment and Training Worker II for the County because of a rheumatological condition at the time she applied for Disability Retirement (DR).

Whether respondent remains substantially incapacitated from the performance of her usual and customary duties as an Employment and Training Worker II for the County because of orthopedic conditions.

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 County as an Employment and Training Worker II. By virtue of her employment, respondent was a local miscellaneous member of CalPERS.

2. On April 13, 2021, respondent signed an application for DR. In filing the application, disability was claimed on the basis of orthopedic (cervical and lumbar spine) and rheumatological (fibromyalgia) conditions.

3. CalPERS sent respondent for an independent medical evaluation (IME) with Anthony Bellomo, M.D. Dr. Bellomo concluded respondent's orthopedic conditions rendered her substantially incapacitated for the performance of her duties

as an Employment and Training Worker II. On July 22, 2021, CalPERS approved respondent's application for DR in part based on her orthopedic conditions, effective April 1, 2021.

4. CalPERS also sent respondent for an IME with Scott. T. Anderson, M.D. Dr. Anderson concluded that respondent's rheumatological condition did not render her substantially incapacitated for the performance of her duties as an Employment and Training Worker II. CalPERS denied respondent's application in part based on her alleged rheumatological condition.

5. By letter dated August 24, 2023, CalPERS informed respondent her case was under review to determine if she continued to meet the qualifications to receive DR benefits. CalPERS sent respondent for an IME with Robert Henrichsen. After reviewing Dr. Henrichsen's IME report, CalPERS determined respondent was not eligible for DR on the basis of a rheumatological condition. CalPERS also determined respondent is no longer incapacitated from the performance of her duties as an Employment and Training Worker II based on her orthopedic conditions.

6. CalPERS informed respondent and the County of its determination by letter dated July 12, 2024. Respondent appealed CalPERS' determinations by letter dated August 8, 2024, and requested an administrative hearing.

7. On February 18, 2025, Sharon Hobbs, in her official capacity as Chief of the CalPERS Disability and Survivor Benefits Division, signed and subsequently filed an Accusation and Statement of Issues for purposes of respondent's appeals. On March 19, 2025, the two matters were consolidated. The matter was then set for 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 Employment and Training Worker II

8. CalPERS submitted two documents explaining respondent's job duties: a "Physical Requirements of Position/Occupational Title" (Physical Requirements) and a "Job Description." The Physical Requirements describe the frequency of an Employment and Training Worker II's tasks. An Employment and Training Worker II is required to do the following: sitting, using a computer, and interacting with members of the public and colleagues (constantly); standing and carrying up to 10 pounds (frequently); walking and driving (occasionally); bending at the waist and reaching above the shoulder (infrequently); and running, kneeling, or climbing (rarely).

9. The Job Description describes the duties an Employment and Training Worker II is expected to perform. Specifically, they: (1) provide employability services to eligible applicants of the CalWORKs and CalFresh employment and training programs; (2) apply program regulations and procedures; (3) assess employment potential and barriers interfering with securing employment; and (4) determine eligibility for public assistance programs through interactive fact gathering.

CalPERS Evidence

DR. ANDERSON IME

10. Dr. Scott T. Anderson received his medical degree from the University of Texas Southwestern Medical School in 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.

11. Dr. Anderson performed respondent's IME at his office in Rancho Cordova, California on July 6, 2021, 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 July 6, 2021, and testified at hearing about his findings, consistent with his IME report.

12. On the date of the IME, respondent attempted to bring two family members into the examination room with her. Due to the size of the room, and social distancing restrictions associated with the Covid-19 pandemic, Dr. Anderson allowed her to bring in only one. Respondent elected to bring her mother into the examination room. Throughout the evaluation, respondent's mother repeatedly attempted to answer Dr. Anderson's questions on respondent's behalf. When she left, she told Dr. Anderson he should approve respondent's disability claim because she is a "good girl."

13. Respondent was extremely emotional throughout the evaluation. She frequently cried and expressed anger and frustration that she was being asked to go to work. At one point, she started swearing and said she cannot deal with people coming into her office because of her many medical conditions.

14. Respondent told Dr. Anderson she suffered from chronic pain stemming from a motor vehicle accident in 2013, when an 18-wheel truck collided with the back of her vehicle. She believes she suffers from fibromyalgia, and that her soft tissue pain from the accident was worse when she was "fibro flaring." She explained she suffers from hiccups, lightheadedness, dizziness, vertigo, low back pain, and joint pain. She also told Dr. Anderson she had difficulty with reading, writing, memory, thinking clearly, chronic fatigue, and depression.

15. Respondent told Dr. Anderson she was referred to physical therapy following the accident in 2013. She ended up participating in aqua therapy, massage therapy, and Feldenkrais treatment, none of which were helpful. Dr. Anderson suggested exercise to improve her overall symptoms. She told him that any level of physical exertion causes her severe pain and indicated that she needed her own custom-built swimming pool to use if she were to exercise. Respondent is five feet six inches tall and weighed 293 pounds on the day of the evaluation.

16. During the physical examination, Dr. Anderson found respondent to have full range of motion in the intrinsic joints of her hands, wrists, elbows, and shoulders. The joints in her hands and wrists were reportedly tender to the touch, but there was no synovial thickening, warmth, or other objective pathology. She had full range of motion in the intrinsic joints of her feet, wrists, and knees. Her hip flexion was somewhat diminished due to her abdominal size, but internal and external hip rotations appeared to be intact. She had full range of motion in her cervical, thoracic, and lumbar spine, and normal strength in her extremities.

17. Dr. Anderson explained that fibromyalgia is a non-specific syndrome characterized by subjective complaints of pain, but not associated with objective destruction of joints, muscle damage, paralysis, or other findings common in systemic inflammatory conditions such as lupus or rheumatoid arthritis. As a result, treatment for fibromyalgia is generally conservative and supportive, and typically involves maintaining a regular sleep cycle, appropriate nutrition, and low levels of aerobic and strength exercises. Staying at home and not moving is counterproductive in treating fibromyalgia. Dr. Anderson does not believe respondent put forth her best effort during the physical examination and believes she "is excessively preoccupied with obtaining long-term medical retirement benefits."

18. Although Dr. Anderson diagnosed respondent with fibromyalgia, he found her subjective complaints of pain to be markedly inconsistent with his objective findings during the physical examination, and he is of the opinion that her physical limitations, if any, are likely attributable to her weight. In his IME report, Dr. Anderson wrote, in part:

> So, we are left with soft tissue pain and discomfort in the setting of lack of exercise and obesity. This in and of itself is not unexpected. For example, although obesity typically is defined in terms of end-organ complications rather than just considered an independent disease state, [it] does manifest with decreased exercise capacity and fatigue. In her case, for her height, her body weight ideally should be, well over 100 pounds less than it is. Therefore, when she ambulates or attempts to go to work, she feels a sense of subjective fatigue associated with carrying of what would be the equivalent of 100 to 150 pounds of additional weight on her back as she walks around.

19. Based on his discussion with respondent, his review of her medical records and job description, and his findings during the physical examination, Dr. Anderson concluded respondent was not substantially incapacitated from the performance of her usual and customary duties. In response to the question of which job duties respondent was unable to perform, Dr. Anderson wrote:

> The answer is zero job duties would be beyond her capacity to perform due to fibromyalgia or complaints of chronic fatigue and pain. The fatigue and chronic pain are

> subsumed under the diagnosis of fibromyalgia and other than the subjective complaints, there are no objective findings that would limit her ability to perform her job duties. Therefore, she can perform her job duties with respect to all of these subjective complaints. I would also suggest that those three complaints should simply be subsumed under the diagnosis of fibromyalgia.

DR. HENRICHSEN IME

20. Dr. Robert 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.

21. Dr. Henrichsen performed respondent's IME at his office in Rancho Cordova, California, on April 2, 2024, using the CalPERS substantial incapacity standard. He obtained respondent's history and symptomology, reviewed her available medical records, including MRI studies of her spine, and physically examined respondent. He then issued an IME report, dated April 2, 2024, and testified at hearing about his findings, consistent with his report.

22. On the date of the IME, respondent was 36 years old, and her stated weight was 250 pounds. She brought her dog with her to the IME, pushing it in a baby carriage. She told Dr. Henrichsen about the 2013 automobile accident and said she had been diagnosed with fibromyalgia. She reported undergoing a large variety of

treatments, such as physical therapy, acupuncture, chiropractic trials and epidural medications, all to no avail.

23. Respondent told Dr. Henrichsen she experiences stiffness and soreness in the morning, and that her joints will occasionally pop. She reported sensitive skin spots and tenderness in her shoulders, hips and thighs, and said she was unable to enjoy any hobbies because of her physical limitations. She also said she had difficulty with concentration, fatigue, indecision, social withdrawal, sleep, depression, anger, crying spells, anxiety, and "fibro fog."

24. Respondent walked into the examination room with a normal tandem heel-to-toe gait. Dr. Henrichsen put her through a series of warm-up exercises before proceeding with the physical examination. She was able to stand on her heels and toes without weakness, and her test for hip muscle weakness was negative. She was able to squat 100 percent but reported some pain while doing so.

25. Respondent reported tenderness in her lower back, but Dr. Henrichsen saw no evidence of muscle spasms, trigger points, muscle guarding, or nodules. He noted she had some proximal thoracis kyphosis in her thoracic spine but otherwise described the range of motion in her spine as "reasonable." Respondent had appropriate function in the lumbar spine with no lower extremity involvement. There was no evidence of atrophy in her hands. Range of motion in respondent's knees, hips, and elbows was normal. She had slightly reduced range of motion in the shoulders.

26. Although respondent was cooperative during the IME, Dr. Henrichsen suspected she was not putting forth her best effort. While he noted "abnormalities" in prior MRI studies of respondent's spine, he attributed them to "normal wear and tear"

as opposed to a condition which would render her substantially incapacitated. He wrote in his IME report, in part:

> My examination does not support that she has reasonable support of her extensive subjective symptoms by examination findings. She does have imaging abnormalities, but as experienced physicians understand, imaging abnormalities are not equal to specific functional incapacities. It is also important to understand that physicians have studied individuals who do not have symptoms and have a variety of imaging abnormalities, and that informal has been present for years in the medical literature.

27. Like Dr. Anderson, Dr. Henrichsen saw very little objective evidence to account for respondent subjective complaints. Consequently, he concluded that she is no longer incapacitated for the performance of her usual and customary duties as an Employment and Training Worker II. He explained:

> The reason that she does not have substantial incapacity, based on the examination today and reviewing extensive records, is the lack of abnormal objective findings. I recognize as do many physicians that a person may be different to examination on one day or another, but in an individual such as [respondent] that has extensive chronic pain symptoms, then if there is any objective support, that objective abnormality will be present somewhere along the way due to the chronicity of the symptoms. However, her

objective examination, except for reduced motion and tenderness, is normal. My examination demonstrates good functional capacity with regard to range of motion.

Analysis

28. Respondent bears the burden of proving, by competent medical evidence, that she was substantially incapacitated from performing her usual and customary duties as an Employment and Training Worker II for the County because of a rheumatological condition. She failed to appear at hearing or introduce any evidence and thereby failed to meet her burden. Dr. Anderson persuasively testified that, despite respondent's many subjective complaints of pain, there is no objective evidence that she cannot work. Consequently, her appeal of CalPERS' denial of her application for DR based on a rheumatological condition must be denied.

29. CalPERS bears the burden of proving, by competent medical evidence, that respondent is no longer substantially incapacitated from performing her usual and customary duties as an Employment and Training Worker II for the County because of orthopedic conditions. Dr. Henrichsen testified he believes respondent did not put forth her best effort during the IME and that aside from slightly decreased range of motion in her shoulders and reported tenderness, there was no objective evidence that respondent is substantially incapacitated in any way. Consequently, her appeal of the CalPERS decision to reinstate her from DR must be denied.

Burden and Standard of Proof

1. Respondent has the burden of proving by a preponderance of the evidence she is eligible for DR on the basis of a rheumatological condition. (*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.)

2. CalPERS has the burden of proving by a preponderance of the evidence that respondent is no longer substantially incapacitated for the performance of her usual and customary duties as an Employment and Training Worker II and should therefore be reinstated. (*In the Matter of the Application for Reinstatement from Industrial Disability Retirement of Willie Starnes* (January 22, 2000) CalPERS Precedential De. 99-03.)

3. The term preponderance of the evidence means "more likely than not" (*Sandoval v. Bank of America* (2002) 94 Cal.App.4th 1378, 1387), or "evidence that has more convincing force than that opposed to it." (*People ex re. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Applicable Law

4. Respondent seeks DR 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, ..."

5. 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.)

6. Government Code section 21153 states:

> Notwithstanding any other provision of law, an employer may not separate because of disability a member otherwise eligible to retire for disability but shall apply for disability retirement of any member believed to be disabled, unless the member waives the right to retire for disability and elects to withdraw contributions or to permit contributions to remain in the fund with rights to service retirement as provided in Section 20731.

7. 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. . . .

8. 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."

9. A member receiving DR benefits who is under the minimum age for voluntary service retirement may be required to undergo medical evaluation to confirm she remains substantially incapacitated. (Gov. Code, § 21192.) If determined to no longer be substantially incapacitated, the member shall be reinstated to her former position or one in the same classification. (Gov. Code, § 21193.) Respondent is under the minimum age for voluntary service retirement. (Gov. Code, § 21060, subd. (a).)

USUAL AND CUSTOMARY DUTIES

10. 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].)

11. 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

12. 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 CalApp.4th 194, 207, citing *Hosford v. Bd. of Administration*, *supra*, 77 Cal.App.3d at p. 862.)

Determination

13. 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 an Employment and Training Worker II because of a rheumatological condition at the time she applied for DR. Consequently, her appeal of the denial of her application for DR on that basis is denied.

14. Based on the Factual Findings and Legal Conclusions as a whole, CalPERS proved by competent medical evidence that respondent is not substantially incapacitated from performing her duties as an Employment and Training Worker II for the County. Consequently, she should be reinstated from DR.

1. Respondent Savanna A. Dambacher's appeal of the denial of her application for DR on the basis of a rheumatological condition is DENIED.

2. CalPERS's determination that respondent Savanna A. Dambacher is no longer substantially incapacitated from the performance of her duties as an Employment and Training Worker II is AFFIRMED.

3. Respondent Savanna A. Dambacher's appeal of reinstatement from DR is DENIED.

DATE: October 6, 2025

Matthew Block

MATTHEW S. BLOCK
Administrative Law Judge
Office of Administrative Hearings