

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:

JENNIFER L. BROOKS, Respondent

and

DEPARTMENT OF FOOD AND AGRICULTURE, Respondent

Agency Case No. 2024-0975

OAH No. 2025060534

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, heard this matter on October 6, 2025, by videoconference.

Senior Attorney Bryan R. Delgado represented complainant Sharon Hobbs, Chief, Disability and Survivor Benefits Division, California Public Employees' Retirement System (CalPERS).

Respondent Jennifer L. Brooks represented herself.

No appearance was made by or on behalf of respondent Department of Food and Agriculture (department).

The record was closed, and the matter was submitted for decision on October 6, 2025.

ISSUE

Was respondent Jennifer L. Brooks (respondent) substantially incapacitated from the performance of her usual and customary duties as a Plant Quarantine Inspector (PQI) for the department as a result of aphasia, apraxia of speech, mild cognitive impairment and migraines, at the time she filed her application for disability retirement?

FACTUAL FINDINGS

Background and Procedural History

1. Respondent was employed as a PQI by the department. By virtue of her employment, respondent was a state miscellaneous member of CalPERS.

2. On March 6, 2023, respondent was exposed to exhaust and diesel fumes while on duty. Kimberly Hove, a coworker of respondent, observed that after the accident respondent had "a look of confusion and stability issues in her walking." PQI Respondent then went to the restroom and reported that her legs were purple.

3. On June 24, 2024, respondent filed an application for disability retirement. The application listed the disabling conditions as "aphasia, apraxia of speech, mild cognitive impairment and migraines." The application stated respondent's last day of work was March 6, 2023.

4. In a letter dated November 19, 2024, CalPERS denied respondent's application for disability retirement stating that her "neurological (aphasia, apraxia of speech, mild cognitive impairment, and migraines) conditions are not disabling."

5. On a date not established by the record, respondent timely appealed the denial of her disability retirement application.

6. On June 12, 2025, complainant signed a statement of issues in her official capacity, seeking to establish whether respondent, at the time of her application for disability retirement, was substantially incapacitated from the performance of her usual and customary duties as a PQI due to her neurological conditions. This hearing ensued.

Essential Functions and Physical Requirements of Position

7. The essential functions of a PQI are set forth in the PQI duty statement. Function 1 is inspecting vehicles to determine if plant material is present and checking the admissibility of plant material based on freedom from pests and quarantine compliance and accounts for 50 percent of the job functions. The duty statement goes on to state that this function requires verbal communication, reading and interpreting shipping manifests, quarantine certificates and other industry-related documents. Function 4 is communicating verbally and in writing with "the public and government agencies regarding the purpose of regulating potential pest risk material, the purpose of inspections and the solution to quarantine issues."

8. The physical requirements for respondent's position are set forth in the "physical requirements of position/occupation title" CalPERS form. The following physical action is to be done constantly (defined as more than five hours): interacting/communicating face to face with the public and coworkers.

Medical Evidence

9. Respondent underwent several evaluations including an independent medical evaluation (IME), qualified medical evaluation (QME), and speech language pathology evaluations. The following medical information was derived from medical records received in evidence, although none of the doctors named in the various records testified at the hearing.

10. On March 22, 2023, respondent was seen by Brad Barth, M.D. Dr. Barth's impression was that respondent had carbon monoxide exposure, speech hesitancy, and daily headaches.

11. On May 9, 2023, respondent underwent an electroencephalogram (EEG) which showed "bihemispheric paroxysmal slowing."

12. On May 10, 2023, respondent underwent a speech language pathology evaluation at Valley View Medical Center. During the evaluation a Western Aphasia Battery Bedside assessment was conducted which indicated that respondent had mild to moderate aphasia.

13. On November 28, 2023, a QME was conducted by neurologist Michel J. Butler, M.D. Dr. Butler noted that respondent had issues with speech and recommended that respondent undergo "formal and comprehensive neuropsychological testing."

14. On August 13, 2024, respondent underwent an advanced MRI, which found "decreased signal in the midline frontal region on ASL which would be compatible with traumatic brain injury." The final paragraph of the report states that

the advanced MRI has "FDA approval/clearance for diagnostic use in individual human subjects."

15. On December 3, 2024, respondent underwent an EEG. The analysis of the EEG provided "objective evidence that is supportive of the clinical diagnosis of brain injury" according to Christopher Stephenson, M.D. Dr. Stephenson is board-certified in physical medicine and rehabilitation and brain injury medicine.

16. On December 3, 2024, respondent was seen by Don Fong, O.D., who is board-certified in ophthalmology. Dr. Fong prepared a written report of his evaluation of respondent. Dr. Fong noted that respondent's words were "disordered, disjointed garble and illogical." He stated that respondent had convergence excess which would "result in her inability to read for prolonged periods of time and contribute to her eye fatigue." Dr. Fong opined that respondent's dizziness, headaches, convergence abnormalities, light sensitivity and eye fatigue "are consistent with individuals with traumatic brain injury and/or hypoxia neurological insults."

17. On March 26-27, 2025, respondent underwent a neuropsychological consultation with Edgar O. Angelone, Ph.D. Dr. Angelone interviewed respondent's partner, reviewed medical records, and administered a battery of tests. In the area of attention and concentration domain, respondent scored in the mildly impaired range. Dr. Angelone stated that the attention and concentration measures indicated difficulties with simple and complex auditory and visual attention and concentration, auditory working memory, processing information, and complex forms of attention and concentration, including divide attention and shifting set.

In the language abilities domain, Dr. Angelone stated that respondent's overall performance was "an area of difficulties." Dr. Angelone reported that respondent's performance on language indicated "significant impairment."

Respondent also exhibited difficulty in the domain of verbal and nonverbal memory and learning. Dr. Angelone reported that the memory studies indicated difficulties "learning and retaining detailed verbal, logically organized information."

Dr. Angelone opined to a reasonable degree of medical certainty that respondent had sustained an "anoxic/toxic brain injury" during the incident at work on March 6, 2023. He stated that respondent's condition was characterized by "persistent dysphasia, apractic speech, dysarthria, cognitive impairment, post-traumatic headaches, and oculovestibular dysfunction." Dr. Angelone opined that respondent's deficits are "chronic, permanent and substantially disabling."

Report and Testimony of Dr. Anees

18. K. Adam Anees, M.D., is a board-certified neurologist. Dr. Anees is licensed in six states including California.

19. On October 30, 2024, Dr. Anees conducted an IME of respondent. As part of his evaluation, Dr. Anees reviewed medical records, the physical requirements and essential functions forms, and physically examined respondent. In his report, Dr. Anees noted that respondent reported speech impairment with difficulty understanding and difficulty expressing herself. He also noted that she described headaches with sensitivity to light and noise, blurry vision, and worsening speech. Dr. Anees observed that respondent had an "intermittent slow hesitant stutter and a telegraphic speech pattern."

20. Dr. Anees listed respondent's diagnosis as "speech and cognitive symptoms." Dr. Anees's impressions were that respondent had ongoing symptoms "including speech impairment, with difficulty understanding and difficulty expressing herself, as well as recurrent headaches." He stated that respondent's neurological examination did not show "objective findings consistent with physical or cognitive loss of function, from a neurological standpoint."

21. Dr. Anees opined that respondent "does not have an actual and present neurological impairment that arises to the level of substantial incapacity to perform her usual job duties, from a neurological standpoint."

22. On January 6, 2025, Dr. Anees prepared a supplemental report after reviewing additional medical records including several visit notes authored by Chirstopher Stephenson, M.D., an EEG report dated December 3, 2024, which stated the EEG was "consistent with the diagnosis of concussive brain injury" and stated that respondent's symptoms will likely worsen with the passage of time; and a MRI conducted the same day as the EEG which showed a "bilateral decrease in traceable fiber tracts of the frontal lobes." Dr. Anees's opinion regarding respondent's substantial incapacity remained unchanged.

23. Dr. Anees's testimony at hearing was largely consistent with his written reports. When asked if respondent was substantially incapacitated for the performance of her duties based on speech and cognitive symptoms (the diagnosis he listed in his IME report), he refused to answer stating that he could not render an opinion on that; he could only opine that respondent was not substantially incapacitated for the performance of her duties based on a neurological condition. Dr. Anees conceded that respondent had been diagnosed with both aphasia and apraxia of speech, but was dismissive of those diagnoses because they were from a speech pathologist.

24. Dr. Anees was emphatic in his testimony that respondent did not have any objective symptoms to support a finding that she was substantially incapacitated for the performance of her duties. When asked about the advanced MRI findings, Dr. Anees stated that the MRI is not supposed to be used to diagnose brain injuries. When questioned about the wording in the last paragraph of the MRI report, Dr. Anees insisted that it was not correct and that the MRI could not be used to diagnose brain injuries.

25. When directly asked if respondent was substantially incapacitated for the performance of her usual duties due to aphasia, apraxia of speech, mild cognitive impairment, and migraines (the disabling conditions listed by respondent in her disability retirement application), Dr. Anees deflected and repeated that respondent was not substantially incapacitated due to any neurological condition. He failed to explain why migraine headaches are considered a neurological condition. For that matter, Dr. Anees gave no information that any of the disabling conditions listed by respondent in her application are solely neurological conditions.

26. Essentially, Dr. Anees dismissed or disagreed with any and all physicians who had diagnosed respondent with a brain injury, aphasia, apraxia of speech, and mild cognitive impairment. Because he was the only physician to testify at hearing, it is appropriate to consider whether he was biased and whether his medical opinion is tainted. After careful evaluation of all evidence in the case, it appears to the undersigned that Dr. Anees's opinion was biased and not supported by the medical records provided. Respondent's behavior and readily apparent struggle with communication during the hearing refute Dr. Anees's opinion.

Respondent's Additional Evidence

27. From the outset of the hearing, it was apparent that respondent was having difficulty expressing herself, retrieving the words she wanted to say, and struggling with comprehension. Respondent's difficulties were so significant that the undersigned was concerned that respondent would not be able to meaningfully participate in the hearing. However, respondent was able to demonstrate that she understood the proceedings and requested that she go forward with the hearing. Respondent spoke using monosyllabic words, without adjectives, and sometimes out of order. Respondent's issues with speech and language were so profound that when it was time for her testimony, she used a text to speech device.

28. Respondent testified that she cannot retain information, speak with the public, or perform her job because of her "phasia." Respondent was visibly frustrated and upset with her struggle with expressing herself while testifying. During the hearing, respondent turned off all the lights in the room she was testifying from, to aid in her ability to participate in the hearing. Respondent provided pages from her plant quarantine manual as an example of the information she is required to read and comprehend while performing her duties. The pages appear to be a report about a specific pest and where a quarantine was occurring out of state. Respondent testified that she could not read the document, nor could she retain enough information to perform the inspection necessary to determine whether the pest was present.

29. Joseph Mascarone, respondent's partner, testified on her behalf. His testimony is summarized as follows. Respondent was quick-witted, memorized her quarantine manual, and was the "human dictionary" at her job. He has witnessed a dramatic change in respondent. She is unable to retain information, has light sensitivity, and is no longer independent. He is thankful that she is still here but feels

that functionally her "life was taken away from her." Respondent is unable to multitask. She got lost going to a doctor appointment. She is no longer able to read stories to their seven-year-old daughter. Mascarone was visibly upset during his testimony.

LEGAL CONCLUSIONS

1. The applicant for a benefit has the burden of proof to establish the right to the claimed benefit; the standard of proof is a preponderance of the evidence.

(McCoy v. Board of Retirement (1986) 183 Cal.App.3d 1044, 1051; Evid. Code, § 115.)

2. Government Code section 21150, subdivision (a), provides that a state miscellaneous member of CalPERS who is incapacitated for the performance of duty and has been credited with five years of state service shall be retired for disability, regardless of age.

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 he is substantially unable to perform his usual duties. *(Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876.)

Discussion

4. CalPERS argues that there is no competent medical evidence that respondent is substantially disabled from the performance of her duties due to a neurological condition. However, Dr. Anees rendered no opinion on whether respondent was substantially disabled due to the disabling conditions actually listed in

respondent's application, aphasia, apraxia of speech, mild cognitive impairment, and migraines. When specifically asked to do so, Dr. Anees evaded giving an answer instead repeating that respondent was not substantially disabled due to any neurological condition, without explaining how any of the disabling conditions listed in respondent's application are solely neurological conditions.

5. Furthermore, the fact that Dr. Anees was unwilling to opine as to whether or not respondent's struggles with speech, the diagnosis from his own IME report, and the disabling conditions listed by respondent in her application, do not constitute a competent medical opinion regarding whether respondent is substantially disabled for the performance of her duties due to the disabling conditions listed in her application.

6. It was readily apparent at the hearing that respondent suffered from substantial deficits in communication.

7. An essential function of respondent's job as a PQI is conducting vehicle and commercial shipment inspections, which require verbal communication. A physical requirement of respondent's position as a PQI is constantly interacting/communicating with the public. Respondent is unable to perform the essential function and physical requirement of communicating with the public. She is substantially disabled for the performance of her job duties.

DETERMINATION OF ISSUES

Respondent Jennifer L. Brooks is substantially incapacitated for the performance of her duties as a Plant Quarantine Inspector within the meaning of Government Code section 20026 by reason of her speech conditions and migraine headaches.

ORDER

The Determination of Issues is hereby certified to the Board of Administration of the California Public Employees' Retirement System.

DATE: November 4, 2025



TRACI C. BELMORE
Administrative Law Judge
Office of Administrative Hearings