ATTACHMENT A

THE PROPOSED DECISION

BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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

ANDREY Y. ANDRSH, and

CALIFORNIA MEDICAL FACILITY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, Respondents.

Agency No. 2023-0569

OAH No. 2023120908

PROPOSED DECISION

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on June 18 and August 18, 2025, by videoconference and telephone.

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

Attorney Craig Dykman represented respondent Andrey Y. Andrsh (Andrsh).

There was no appearance on behalf of respondent California Medical Facility, California Department of Corrections and Rehabilitation (CDCR).

The record was held open for briefing. CalPERS submitted a closing brief, Andrsh submitted a closing brief, and CalPERS submitted a reply brief. These briefs were marked for identification as Exhibits 18, X, and 19, respectively.

The record closed and the matter was submitted on October 20, 2025.

ISSUE AND SUMMARY

The sole issue in this matter is whether Andrsh remains substantially incapacitated from performance of the duties of his former position as a Medical Technical Assistant for respondent CDCR due to orthopedic conditions (neck; back; and bilateral shoulders, elbows, and wrists).

The evidence shows that Andrsh remains substantially incapacitated from performance of his former duties, due to a combination of these orthopedic conditions.

FACTUAL FINDINGS

Jurisdiction and Background

1. At different points in his career, Andrsh was employed by CDCR as a licensed vocational nurse (LVN) and as a Medical Technical Assistant (MTA). It is undisputed that, by virtue of this employment, respondent Andrsh was a state safety member of CalPERS at all relevant times.

2. On August 14, 2020, Andrsh submitted an application for Industrial Disability Retirement (IDR).

3. CalPERS alleges that on October 30, 2020, "an appointment change occurred to Andrsh's CalPERS account and his job position title was reclassified" from MTA to LVN, but he remained a state safety member.

4. On February 18, 2021, CalPERS notified Andrsh that his IDR application had been approved on the basis of orthopedic (bilateral shoulders, elbows, wrists, neck, and back) conditions, based on his position as an MTA. Andrsh retired for disability with an effective date of February 5, 2021.

5. On May 12, 2022, CalPERS notified Andrsh that his retirement benefit was under review to determine if he continued to meet the qualifications to receive IDR benefits pursuant to Government Code section 21192.

6. On April 25, 2023, CalPERS notified both respondents of its determination to reinstate Andrsh to his former position of LVN, and informed both parties of their right to appeal this determination.

7. On May 8, 2023, Andrsh timely filed an appeal and requested an administrative hearing.

8. On May 18, 2023, Andrsh filed an addendum to his appeal, clarifying that he contends that (1) he is still not physically capable of performing the physical duties of an LVN, and (2) he retired as an MTA, a "safety" classification, therefore CalPERS's attempt to return him to a non-safety LVN position is impermissible.

9. On July 11, 2024, CalPERS filed the operative first amended accusation, alleging that the sole issue to be determined is whether Andrsh remains substantially incapacitated from performance of the duties of a LVN for CDCR due to orthopedic conditions (neck; back; and bilateral shoulders, elbows, and wrists).

10. At hearing, CalPERS agreed that Andrsh may later raise the issue of whether he can be returned to an LVN position. Based on that assurance, Andrsh agreed to CalPERS's statement of the sole issue to be determined in this hearing.

11. In a status conference on September 16, 2025, the parties stipulated to amending the first amended accusation as follows:

On page A2, paragraph V, line 12: the sentence "Respondent Andrsh's IDR application was approved based on his position as an MTA" is inserted after the word "conditions." Accordingly, Paragraph V, as amended, now states:

> By letter dated February 18, 2021, CalPERS notified Respondent Andrsh that his IDR application had been approved on the basis of orthopedic (bilateral shoulders, elbows, wrists, neck, and back) conditions. Respondent Andrsh's IDR application was approved based on his position as an MTA. Respondent Andrsh retired with an effective date of February 5, 2021.

On page A5, paragraph XIII, line 21: the word "the" is stricken and replaced with the phrase "his former"; and the term "Licensed Vocational Nurse" is stricken and replaced with the term "Medical Technical Assistant." Accordingly, Paragraph XIII, as amended, now states:

> This appeal is limited to the issue of whether Respondent Andrsh remains substantially incapacitated from performance of his former duties of a Medical Technical Assistant for Respondent CDCR due to orthopedic (bilateral

shoulders, elbows, wrists, neck, and back) conditions. (Gov. Code, §§ 21192 and 21193).

12. Accordingly, the sole issue to be determined in this proceeding is whether Andrsh remains substantially incapacitated from performance of his former duties as an MTA for CDCR due to orthopedic conditions (neck; back; and bilateral shoulders, elbows, and wrists).

Work History and Industrial Injuries

13. In 2008, Andrsh completed a nursing program and was licensed as an LVN by the State of California.

14. In November 2008, he began working as an LVN for CDCR at the Pelican Bay State Prison. In June 2010, he transferred to San Quentin State Prison.

15. In February 2011, he was hired as an MTA. He completed peace officer training and graduated in May 2011. Andrsh reports that he was at this time lifting weights every day and in "excellent physical shape." Andrsh is six foot, four inches tall and right-hand dominant. In February 2011, he weighed 260 pounds.

16. In May 2011, Andrsh began working as an MTA in the inpatient psychiatric unit of CDCR's California Medical Facility, a state prison medical facility located in Vacaville. His duties included providing care as an LVN, but also duties similar to those of a correctional officer, including cell extractions (forcibly removing an inmate from a cell), forcible administration of medications, and forcibly preventing inmates from attempting to hurt themselves and others. Andrsh reports that, because of his large size, he was assigned to cell extractions more than other MTA's and typically he was the first MTA to engage the inmate.

17. On March 19, 2014, during a cell extraction, Andrsh fell on to a concrete bunk and hurt his mid-to-low back.

18. On October 30, 2015, during a cell extraction, Andrsh was stabbed in the left thigh with a metal spike. During this altercation, he also injured his right shoulder, neck and back. He promptly reported the injuries and sought treatment. Ultimately, he missed three to four months of work, primarily due to the orthopedic injuries. He received a variety conservative treatments, including physical therapy, acupuncture, and medications. Andrsh reports that his right shoulder and neck symptoms did not fully resolve, but he returned to full-duty work in February 2016.

19. Approximately one month later, in March 2016, Andrsh responded to a report of an unresponsive inmate. While lifting the inmate onto a gurney, Andrsh felt a sharp pain in his right shoulder, and also pain in his neck and back. He reported the injuries or aggravations and sought treatment. He does not remember if he missed work, but returned to full-duty work.

20. On September 23, 2016, during a cell extraction, Andrsh was punched by an inmate, and while falling to the floor, hit his left elbow on a concrete bunk. Andrsh felt pain in his left elbow, left shoulder, and neck. He reported the injuries and sought treatment. Andrsh was diagnosed with a left shoulder AC joint separation and labral tear.

21. Over these years Andrsh received conservative treatment for his upper extremity injuries and neck pain, including physical therapy, chiropractic treatments, nerve block injections, pain medications, and steroid injections. Andrsh reports that he still remained in significant pain and had mobility problems.

22. Ultimately, Andrsh was referred to Noah Weiss, M.D., an orthopedic surgeon, who diagnosed labral and rotator cuff tears and impingement in Andrsh's right shoulder; left cubital tunnel syndrome; and subscapularis rotator cuff tear, left shoulder, biceps tendinitis, shoulder impingement, AC joint instability, and synovitis in Andrsh's left shoulder; and recommended multiple surgeries.

23. On March 13, 2018, Dr. Weiss performed surgery upon Andrsh's right shoulder, specifically arthroscopy with extensive debridement, and arthroscopic subacromial decompression.

24. On June 22, 2018, Dr. Weiss performed surgery upon Andrsh's left shoulder, specifically arthroscopic subscapularis rotator cuff repair, biceps tenodesis, arthroscopic subacromial decompression, distal clavicle resection, arthroscopic debridement, and synovectomy. Dr. Weiss also performed surgery on Andrsh's left elbow, specifically an ulnar nerve anterior subcutaneous transposition.

25. In November 2018, Andrsh returned to full duty work as an MTA. Andrsh reports that he still remained in significant pain and had mobility problems, but he was committed to returning to work so he tried to do so.

26. On March 9, 2019, during a cell extraction, an inmate was combative and Andrsh fell onto a concrete bunk and felt a sharp pain in his back. He does not recall if he missed any time at work after this incident.

27. Andrsh reports that in the course of a typical day as an MTA, he would use his keys to turn a lock several hundred times per day. He also used his hands throughout the day to handle medications and administer injections. Over the course of his employment as an MTA, Andrsh began to experience increasing pain in his wrists, and numbness in his hands and fingers. He reported these conditions. In early

2016, he was diagnosed with moderate right carpal tunnel syndrome. By early 2019, these symptoms worsened to the point that Andrsh had trouble performing his job duties.

28. On July 16, 2019, Andrsh was evaluated by Vatche Cabayan, M.D., for all his orthopedic conditions, but apparently primarily for hand symptoms. Dr. Cabayan diagnosed bilateral carpal tunnel syndrome, suggested surgeries, and placed Andrsh on temporary total disability status. Adarsh reports that Dr. Cabayan told him that he did not think Andrsh could perform his job duties, due to his various injuries. Andrsh reports that he felt "heartbroken" to hear this. It appears that Andrsh never returned to work after this date. Andrsh continued to receive a variety of treatments for his orthopedic conditions.

29. On April 15, 2020, after further electrodiagnostic testing, Dr. Weiss diagnosed Andrsh with bilateral carpal tunnel carpal tunnel syndrome, right greater than left; and ulnar nerve irritation/cubital tunnel syndrome, right upper extremity. Dr. Weiss recommended surgery.

30. On January 19, 2021, Dr. Weiss performed a bilateral carpal tunnel release surgery upon Andrsh.

31. On March 17, 2021, Dr. Weiss noted that Andrsh was unable to sleep through the night (presumably due to hand symptoms) and Dr. Weiss diagnosed ulnar cubital tunnel syndrome in Andrsh's right elbow.

32. Since then, Andrsh continued to receive approximately monthly medical evaluations and conservative treatment for his orthopedic conditions, including a pain therapy program, pain medications, muscle relaxant medications, and injections in

both hands. Andrsh reported continuing pain and orthopedic symptoms to his medical providers.

33. Andrsh reports that he was very proud of being a peace officer and his work as an MTA, he misses working, and he would return to this work if he were able.

Expert Opinions

EXPERT REPORT OF DR. BELLOMO

34. At CalPERS's request, Anthony Bellomo, M.D., an orthopedic specialist, evaluated Andrsh's orthopedic conditions. Dr. Bellomo interviewed and examined Andrsh, reviewed medical records and a job description, and issued reports dated December 14, 2020, and February 2, 2021.

35. Dr. Bellomo observed significantly reduced range of motion (flexion, abduction, internal and external rotation) and deltoid atrophy in Andrsh's left shoulder; reduced range of motion and tenderness in Andrsh's left elbow; positive Tinel's sign (suggesting nerve damage), thenar (base of thumb) atrophy, and tenderness over the right carpal tunnel, but only tenderness and atrophy over the right; and reduced grip strength in the left hand (with noted poor effort in testing both hands). However, Dr. Bellomo opined that Andrsh was "putting forth best effort and there is no exaggeration of complaints."

36. Dr. Bellomo diagnosed Andrsh with "[c]hronic pain in the neck, upper and low back, chronic right and left shoulder pain, right and left elbow pain, right and left wrist pain." Dr. Bellomo opined that Andrsh's orthopedic impairments rose to the level of substantial incapacity to perform his usual job duties, and opined that this

incapacity was "temporary, but may last 12 months." Dr. Bellomo stated that the objective findings he observed to support these opinions included:

> loss of range of motion of the cervical and lumbar spine with cervical and lumbar paraspinous muscle spasming, loss of range of motion of the right and left shoulders with positive right deltoid atrophy, positive bilateral impingement sign, some loss of range of motion of the elbows with evidence of Tinel sign over the cubital tunnel, evidence of carpal tunnel syndrome on electrodiagnostic studies, decreased sensation involving the right and left hands and forearms, decreased motor strength in the upper extremities, as well in particular decreased grip strength.

37. For each orthopedic condition, Dr. Bellomo identified physical motions required by the job that Andrsh would be unable to perform, specifically: twisting and bending at the neck; sitting, standing, walking, crawling, squatting, bending at the waist and lifting; pulling, pushing, reaching above shoulder level; reaching, pulling and pushing; pulling, pushing, fine manipulation, power grasp, simple grasp and repetitive use of the hands, and keyboarding.

EXPERT TESTIMONY AND REPORT OF DR. RYAN

38. Manijeh Ryan, M.D., evaluated Andrsh's orthopedic injuries and issued reports on 10 different occasions between July 5, 2016, and January 27, 2024, in the capacity of an agreed medical examiner in connection with multiple worker's compensation claims arising from Andrsh's employment as an MTA. She interviewed and examined claimant each time and reviewed his medical records and job

description. On November 29 and December 1, 2019, Dr. Ryan conducted physical performance tests and a functional capacity evaluation of Andrsh. On multiple occasions, Dr. Ryan also conducted needle electromyography and nerve conduction tests of Andrsh's spine and upper and lower extremities.

39. Dr. Ryan earned her medical degree in 1994 and practiced and trained in Iran and Canada. She has been licensed as a physician in California since 2011, and has been board-certified in physical medicine and rehabilitation, pain medicine, and brain injury medicine, since the early 2010's. Until 2022, she maintained a private practice, treating or evaluating patients rehabilitating from orthopedic and neurological conditions. She is a pain specialist and describes her role as the "core of rehabilitation, before and after surgery." In 2022, Dr. Ryan continued evaluating, but stopped treating, patients in her own practice and began serving as a rehabilitation and pain specialist for the United States Department of Veterans Affairs and also as an assistant clinical professor for the University of California, Davis.

40. Dr. Ryan diagnosed Andrsh with:

- Cervicogenic headaches
- Chronic Bilateral C5 Cervical Radiculopathy
- Chronic Bilateral C6 Cervical Radiculopathy
- Chronic Left C7 Cervical Radiculopathy
- Right shoulder adhesive capsulitis
- Status post right shoulder surgery - 03/13/18
- Status post left shoulder surgery - 06/22/18

- Bilateral Suprascapular motor mononeuropathy
- Status post left ulnar nerve transposition - 06 /22/18
- Clinical Right cubital tunnel syndrome
- Status Right Carpal Tunnel release 01/19/21
- Status Left Carpal Tunnel release 01/19/21
- T10-11 thoracic facet arthropathy
- Bilateral T11 radiculitis
- L4-L5 Lumbar facet arthropathy
- Chronic Bilateral L5 lumbar radiculopathy
- Chronic Bilateral S1 lumbosacral radiculopathy

41. Dr. Ryan reviewed Andrsh's job description(s) and opined that he is unable to perform the following duties of his position as an MTA: unable to respond quickly over uneven surfaces or to multiple levels separated by stairs, due to spinal and radiculopathy conditions seen on his lumbar and thoracic MRI's; does not have sufficient strength, agility, and endurance to respond to emergency situations due to lack of strength in legs per physical examination, lumbar MRI, and lower extremity electrodiagnostic testing results; muscle relaxant medication prescribed to Andrsh may cause mental slowing and prevent recall for report writing, inhibit ability to react to hazards, and also reduce agility; Andrsh cannot occasionally to frequently lift or carry more than 10 pounds; unable to use fingers and hands steadily, and no repetitive gripping or grasping due to decreased strength in hands from carpal tunnel syndrome

and shoulder and cervical radiculopathy; Andrsh needs to "sit, stand, and lay at will" and cannot walk continuously, or occasionally to frequently stoop, bend, kneel, reach, squat, climb, crawl, and twist, due to "his full spine"; and may not be able to tolerate protective gear, depending on weight.

42. Dr. Ryan opines that Andrsh's permanent work restrictions include: no physical confrontations; no repetitive gripping or grasping; no lifting more than 10 pounds; no overhead activity; no defensive tactics training; ability to sit, stand and lay down at will; and no task where sudden incapacitation is a danger to self or others.

43. At hearing, Dr. Ryan opined that Andrsh is not "an exaggerator," based on numerous objective measures, such as surgeries, MRI's, nerve testing, Functional Capacity Evaluations (FCE) (with a heart rate monitor), and her nine years of observing him. Dr. Ryan explained that her FCE's of Andrsh use electronic measurements so he did not know how much force was being measured and the heart rate monitor showed he was using full effort. Dr. Ryan also emphasized that two-point discrimination testing with eyes closed showed nerve numbness in Andrsh's upper extremities and one "can't fake that." Also, nerve conduction tests showed moderate delay in his median carpal tunnel nerve and 2024 nerve conduction testing shows radiculopathy, which shows that Andrsh is honestly reporting sensory problems in his hands. Dr. Ryan opines that carpal tunnel release surgery generally yields good results, but sometimes the nerves do not fully recover and there can be complications from the surgery itself.

44. Dr. Ryan also points to a 2021 MRI finding of "broad disc protrusion effaces the ventral thecal sac" surrounding the spine at level C5-6 as evidence of a cause of Andrsh's weakness in the shoulder region. She opines that electromyography testing confirmed this nerve irritation.

EXPERT TESTIMONY AND REPORT OF DR. HENRICHSEN

45. On February 7, 2023, at CalPERS's request, Robert Henrichsen, M.D., evaluated Andrsh's orthopedic conditions and issued a report that same date. Dr. Henrichsen interviewed and examined Andrsh, reviewed medical records and a job description, issued a report dated February 7, 2023, and testified at hearing.

46. Dr. Henrichsen earned his medical degree in 1967 and has been a board-certified orthopedic specialist since 1974. In the early 1990's, Dr. Henrichsen began conducting independent medical evaluations. He retired from active practice in 2011 and has primarily conducted evaluations since that time. He estimates that he has conducted more than 200 such evaluations for CalPERS over the years.

47. Andrsh reported that he weighed 235 pounds. Dr. Henrichsen observed Andrsh to be 6 feet, 4 inches tall, have "excellent muscle mass in in his legs, trunk, chest, shoulders, and also excellent muscle definition in his shoulders, neck, thoracic spine, lumbar spine, and both thighs." He opined that these observations were "consistent with an individual that was working out for months or just recently stopped working out in the last four to six weeks." Andrsh was able to stand on heels and toes and squat, but reported that more squatting causes back pain. Dr. Henrichsen observed straight leg raising of 5 and 15 degrees (right and left leg). Dr. Henrichsen reported that:

> He has excellent quadriceps development and can just barely lift the right leg and foot off the examining table. If I just hold his leg and foot at his maximum achieved straight leg raise position, ankle flexion/extension does not

> reproduce symptoms of lower extremity radicular nature.
> He explained some back pain was present.

While sitting, Andrsh could extend both knees only part way. Each leg was "25 degrees short of full extension, produces low back pain and not radicular symptoms."
Dr. Henrichsen did not observe atrophy. Dr. Henrichsen observed mostly symmetrical range of motion in Andrsh's neck, back and shoulders, with mild asymmetry in his shoulder flexion and abduction. Dr. Henrichsen observed "a Popeye deformity from his biceps release inside the joint" but reported that his "elbow flexion and extension strength are normal when manually tested." Dr. Henrichsen reported that "[t]here is little tenderness over the left AC joint but not the right, there is no subacromial crepitus or mechanical evidence of impingement findings of either shoulder, although he states it is painful with some of those maneuvers."

Dr. Henrichsen reported that:

> Tinel's testing of the left elbow produces symptoms in the ulnar forearm and wrist, but not the symptoms in the hand. The left olecranon to tapping was extremely sensitive, as is seen in individuals with a positive Tinel sign, but the ulnar nerve at the right elbow over the nerve was not sensitive to Tinel's tapping. There is no effusion of either elbow.
>
> ¶ . . . ¶
>
> Two-point discrimination of the median nerve was 4/4 and ulnar nerve 8/7 mm, although when I tested again, the ulnar nerve was 10/10 mm.

48. Dr. Henrichsen observed regarding Andrsh's shoulders:

> active range of motion is limited and he will abduct to about 90 degrees. He does have concentric contractions of his musculature. He does not have clicking, catching or impingement during abduction maneuvers, but he puts forth reduced effort and reduced range of motion.

49. Dr. Henrichsen diagnosed: 1) degenerative arthritis of cervical spine; 2) history of right shoulder arthroscopy, with subacromial decompression; 3) history of left shoulder arthroscopy with bicep tendon release, subscapularis repair; 4) degenerative arthritis, thoracic spine; 5) degenerative arthritis, lumbar spine; 6) controversial examination findings; and 7) "reduced effort on examination."

50. Dr. Henrichsen opined different ranges of motion reported by different providers and Andrsh's significantly reduced shoulder range of motion during Dr. Henrichsen's examination were unsupported by Andrsh's medical records.

51. Dr. Henrichsen opined that Andrsh has "degenerative disease consistent with age"; does not have "mechanical nerve impingement in his neck or low back by any imaging study" and his "entire spine is stable." Dr. Henrichsen opined that Andrsh's bilateral shoulder surgeries appeared to have been successful and "no provider determined that there was sufficient difficulty with either shoulder to have follow-up imaging of either shoulder."

52. Dr. Henrichsen opined that Dr. Ryan did not "support her electrical findings with objective evaluation criteria, which is mandatory for medical accuracy."

53. Dr. Henrichsen opined:

> There has been quite a discussion of wrist pain. Actually, all that occurred was he had a right and left carpal tunnel release. The incisions are healed. The wrist joints are normal except for the healed incisions. He has no de-sensate lesions in his fingers. He has normal thenar and hypothenar strength. His 2-point sensation & light touch was normal as tested by other providers. Today I found his ulnar nerve hand side 2-point discrimination to be abnormal. The finger sensation supplied by the median carpal tunnel nerve were normal.

54. Dr. Henrichson opined that a "post surgery Tinel's sign make[s] no functional difference in most occupations including" Andrsh's.

55. Dr. Henrichson opined:

> Dr. Bellomo's CalPERS disability evaluation appears to be based on symptoms, abnormal imaging, tenderness, and "spasming". Muscle spasms are a real annoying temporary problem. A muscle spasm is a cramp, just the same as many of us have at random. They are very temporary and when present is the top priority for the affected individual.

56. Dr. Henrichson opined that Andrsh "does not have actual and present orthopedic incapacity for his left shoulder and left elbow. He also does not have substantial incapacity present in regard to his wrists, neck and back." He further opined:

> Mr. Andrsh does not have substantial incapacity because his true objective examination finds that those areas are functioning normally. Again, he does not have examination findings of radicular syndrome in spite of some physicians explaining he had Spurling's sign positive and Tinel's and Phalen's test positive but nobody explains what symptoms were present with that positivity and that is really important to explain. I did not find that he had radiculopathy to examination.

57. Regarding Andrsh's cooperation and effort, Dr. Heinrichson reported:

> Mr. Andrsh is a cooperative individual. By physician assessment, he puts forth much less than best effort and he does have a large disconnect between symptoms and findings in that his symptoms are poorly supported by his findings. Essentially, he has limited motion at the time of this exam, no nerve impingement, no spine instability, satisfactory but not perfect result of carpal tunnel release surgery, no atrophy that I could find, and lots of symptoms. I consider this as serious exaggeration of symptoms. He explained he had a 7 level of pain today. He was in no visible pain. His medically accurate pain level today was a 2.

58. At hearing, Dr. Henrichsen opined that reduced effort could be the reason Andrsh displayed reduced range of motion. Dr. Henrichsen emphasized his opinions that Andrsh's physique suggests that he can do more than he demonstrated during the examination, including exercise, and objective findings are not consistent

with his symptoms. Dr. Henrichsen opined that Andrsh is able to perform the job duties of an MTA.

Ultimate Factual Finding

59. The evidence establishes that Andrsh remains substantially incapacitated from performance of the duties of his former position as an MTA for respondent CDCR due to a combination of his neck; back; and bilateral shoulder, elbow, and wrist conditions. Dr. Ryan and Dr. Henrichsen are both well-qualified experts, but Dr. Ryan's opinions that Andrsh remains incapacitated were more persuasive because they were supported by the opinions of other physicians, most notably Dr. Bellomo, and the evidence does not suggest that Andrsh's orthopedic conditions have substantially improved since Dr. Bellomo's evaluation, despite a subsequent surgery. Moreover, Dr. Henrichsen's opinion that Andrsh is too muscular to be incapacitated was not persuasive as the evidence shows that Andrsh was approximately 30 pounds heavier when he became a peace officer and was in excellent physical condition, suggesting that Andrsh may have lost significant muscle mass since that time. Further, Andrsh never claimed to be unable to participate in strength training, which is commonly a part of rehabilitation programs. Andrsh's MTA duties included regularly engaging in physical confrontations and combat with inmates, which requires an extremely high level of physical function each day on the job. Contrary to Dr. Henrichsen's contention, Dr. Ryan pointed to many objective findings suggesting that Andrsh no longer has the capacity to function at this level, after numerous industrial injuries and three surgeries involving both shoulders, his left elbow, and both hands, and ongoing pharmacological and other conservative treatments.

LEGAL CONCLUSIONS

1. Government Code section 21192 provides that the Board:

> may require any recipient of a disability retirement allowance . . . to undergo medical examination.....Upon the basis of the examination, the board..... shall determine whether he or she is still incapacitated, physically or mentally, for duty in the state agency..... where he or she was employed and in the position held by him or her when retired for disability . . .

2. The term "incapacitated for the performance of duty" is defined as a "disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined on the basis of competent medical opinion." (Gov. Code, § 20026.) An applicant is "incapacitated for performance of duty" if she is substantially unable to perform the usual duties of her position. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876.) Notably, discomfort, which may make it difficult for an employee to perform her duties, is not by itself sufficient to establish permanent incapacity. (See *Smith v. County of Napa* (2004) 120 Cal.App.4th 194, 207; *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 862; *In re Keck* (2000) CalPERS Precedential Bd. Dec. No. 00-05, at pp. 12–14.)

3. The medical opinion evidence establishes that Andrsh remains substantially incapacitated from performance of the duties of his former position as a MTA for respondent CDCR due to a combination of his neck; back; and bilateral shoulder, elbow, and wrist conditions. (Factual Finding 59.)

ORDER

It is found that respondent that respondent Andrey Y. Andrsh remains substantially incapacitated from performance of his former duties of a Medical Technical Assistant for respondent California Medical Facility, California Department of Corrections and Rehabilitation, due to orthopedic (bilateral shoulders, elbows, wrists, neck, and back) conditions.

DATE: 11/19/2025

MICHAEL C. STARKEY
Administrative Law Judge
Office of Administrative Hearings