

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:

KEVIN J. MCNEAL,

and

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND
REHABILITATION,**

Respondents

Agency Case No. 2023-1035

OAH No. 2025020767

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, heard this matter on November 10, 2025, by videoconference.

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

Respondent Kevin J. McNeal represented himself.

No appearance was made by or on behalf of respondent California Department of Corrections and Rehabilitation (department) and the matter proceeded as a default against this respondent pursuant to Government Code section 11520.

The record was closed, and the matter was submitted for decision on November 10, 2025.

ISSUE

Was respondent Kevin J. McNeal (respondent) substantially incapacitated from the performance of his usual and customary duties as a Transportation Correctional Sergeant (TCS) for the department as a result of hypertension, lower back, right knee, and left foot injuries at the time of his application for service retirement?

FACTUAL FINDINGS

Background and Procedural History

1. Respondent was employed as a TCS by the department. By virtue of his employment, respondent was a state safety member of CalPERS.
2. On April 2, 2022, respondent filed an application for service retirement with a retirement date of April 8, 2022.
3. In a letter dated April 21, 2022, CalPERS informed respondent that his service retirement was approved and the benefit amount.

4. On April 28, 2023, CalPERS received an industrial disability retirement (IDR) application from respondent. In the application, respondent listed his disabling conditions as "lower back, right knee and left foot. I can't sit or stand for a long period of time" as a basis for IDR. The requested date for respondent's IDR was the same date as respondent's service retirement, April 8, 2022.

5. During the processing of respondent's IDR application, respondent was allowed to amend the application to add hypertension as a disabling condition.

6. In May and June of 2023, CalPERS sent respondent letters requesting further information regarding his medical conditions. Respondent did not respond to those requests. In the letter dated June 15, 2023, CalPERS stated that if the requested information was not received, his IDR application could be canceled.

7. In a letter dated October 18, 2023, CalPERS denied respondent's application for disability retirement stating that his hypertension was not a disabling condition. The letter further stated that it had received insufficient medical records regarding his orthopedic conditions and therefore CalPERS was unable to make a determination on those conditions.

8. On October 26, 2023, respondent timely appealed the denial of his IDR application. In his appeal letter, respondent stated that he was substantially incapacitated from the performance of his usual duties due to his left foot injury.

9. In a letter dated June 30, 2025, CalPERS denied respondent's application for IDR based on his orthopedic conditions as untimely. The letter stated that respondent had discontinued employment on April 8, 2022. It noted that CalPERS had requested medical records from the date of his service retirement and did not receive "medical records establishing that you have been continuously disabled based on your

orthopedic (lower back, left foot, and right knee) condition” from the date of his service retirement.

10. On a date not established by the record, respondent appealed the denial of his IDR application.

11. On November 6, 2025, complainant signed an amended statement of issues in her official capacity, seeking to establish whether respondent, at the time of his application for service retirement, was substantially incapacitated from the performance of his usual and customary duties as a TCS due to his cardiologic condition (hypertension). Respondent timely appealed and this hearing ensued.

Essential Functions and Physical Requirements of Position

12. The essential functions of a TCS are set forth in the TCS duty statement. The essential functions include supervising the work of transportation correctional officers; participating in scheduled transports of inmates as the supervising member of the team; and preparing and/or implementing transportation schedules, vehicle repair, and vehicle maintenance schedules.

13. 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 and sitting. Frequently (defined as two and a half to five hours) required physical actions include driving, interacting/communicating with inmates, and supervising staff. All other physical activities are either occasional (31 minutes to two and a half hours), infrequent (five to 30 minutes), or rarely (less than five minutes).

Medical Evidence

14. Very little medical evidence was provided. Respondent provided a qualified medical evaluation (QME) and CalPERS provided an independent medical evaluation (IME), and a physician's report on disability. Neither side produced any testimony from a medical practitioner.

15. Greg Neill, an associate governmental program analyst employed by CalPERS testified at hearing. That testimony is summarized as follows: He reviews applications and accompanying medical records and handles appeals. He handled respondent's application and appeal. He sent several letters to respondent attempting to get medical records supporting respondent's orthopedic conditions but did not receive them.

16. In a letter dated May 23, 2023, CalPERS requested that respondent provide medical records from his treating medical specialist, i.e. orthopedist. The letter stated that respondent should ensure that his physician provided the requested information to CalPERS by June 7, 2023. No records were received in response to this request.

17. In a second letter dated June 15, 2023, CalPERS requested that respondent provide medical records from his treating medical specialist, i.e. orthopedist. The letter stated that respondent should ensure that his physician provides the requested information to CalPERS by July 6, 2023. In response, CalPERS received the physician's report on disability.

18. Jien Sup Kim, M.D., prepared the physician's report on disability. In the report, Dr. Kim noted that they had first treated respondent on February 22, 2023, for an injury that occurred on April 9, 2022, the day after respondent's service retirement.

Dr. Kim wrote that respondent was responding to an urgent call and while running, stepped awkwardly on the edge of a concrete ramp and twisted his left foot. Dr. Kim wrote that the restrictions should be limited standing and walking. Dr. Kim opined that respondent was substantially incapacitated from the performance of his usual duties as a TCS.

19. On September 13, 2023, Stuart Fischer M.D., performed an IME of respondent for his cardiac condition (hypertension). As part of his evaluation, Dr. Fisher reviewed medical records, the physical requirements and essential functions forms, and physically examined respondent. Dr. Fisher diagnosed respondent with hypertension but noted that respondent had no "evidence for hypertensive heart disease" and that respondent's "blood pressure is under good control with a single medication." Dr. Fisher opined that respondent was not substantially incapacitated from the performance of his usual duties as a TCS due to hypertension.

20. On January 23, 2025, Mitchell Geiger, M.D., performed a qualified medical re-evaluation of respondent and prepared a written report. In his report, Dr. Geiger noted that he had performed a QME of respondent on August 17, 2023, and prepared a supplemental QME report on February 22, 2024. As part of his evaluation, Dr. Geiger reviewed medical records, the physical requirements and essential functions forms, and physically examined respondent. Dr. Geiger noted that respondent had a workers' compensation claim regarding his lower back and that respondent had settled that claim in 2020 and "reports no worsening impairment since that time." Dr. Geiger imposed work restrictions including no repetitive or heavy lifting, no repetitive pushing and/or pulling, bending or prolonged walking, and the ability to change positions from sitting to standing as needed.

Respondent's Additional Evidence

21. Respondent testified that when he filled out his service retirement application there was no in person help available. He had been employed as a "bus" sergeant but the last year of his employment he asked to go to the scheduling desk because he was having back pain and taking "a lot" of pain pills. As a result, he could not drive. Respondent stated that a motor vehicle accident in 2015 caused his back problems. When asked about the lack of medical records between May 2016 and April 2023, respondent stated that he was being seen by a workers' compensation physician during that time. Respondent stated that during his IME there were no "real tests" performed, and he was never asked about his foot or back. Respondent stated that hypertension is what "really drove me out."

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 21151, subdivision (a), provides that a state safety member of CalPERS who is incapacitated for the performance of duty as the result of an industrial disability, shall be retired for disability regardless of age or amount of service.

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 respondent has not provided competent medical evidence that he was substantially incapacitated from the performance of his usual duties as a TCS as a result of either hypertension or his orthopedic conditions at the time of his separation from employment. The only reports provided during the hearing are all dated well after respondent's retirement date of April 8, 2022. In fact, the re-evaluation provided by respondent is dated in 2025 and notes that the original QME was performed in August 2023, more than a year after respondent's retirement. No medical records were provided that were dated at or near the time of respondent's retirement. Furthermore, respondent did not call any witnesses to testify about his medical conditions or reports. Without testimony, the reports received in evidence cannot establish a competent medical opinion on whether respondent was substantially incapacitated for the performance of his usual duties as a TCS at the time of his separation from state service.

5. Respondent has failed to provide any evidence of his disabling conditions at or near the time of his retirement. As a result, respondent has failed to establish that he was substantially incapacitated for the performance of his usual duties as a TCS due to either hypertension or his orthopedic conditions.

ORDER

Respondent Kevin J. McNeal's appeal of CalPERS determination that he is not substantially incapacitated from performing his usual and customary duties is denied.

Respondent was not substantially incapacitated for the performance of his duties as a Transportation Correctional Sergeant within the meaning of Government Code section 20026, by reason of his hypertension and orthopedic conditions. CalPERS's determination is affirmed.

DATE: December 9, 2025

A handwritten signature in cursive script that reads "Traci C. Belmore".

TRACI C. BELMORE

Administrative Law Judge

Office of Administrative Hearings