

ATTACHMENT A

THE PROPOSED DECISION

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

In the Matter of the Statement of Issues Against:

REMY BLACK,

Respondent.

Agency Case No. 2025-0078

OAH No. 2025071071

PROPOSED DECISION

Shanda W. Connolly, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on February 9, 2026.

Preet Kaur, Senior Attorney, represented the California Public Employees' Retirement System (complainant or CalPERS).

Respondent Remy Black, DDS, MBA, represented himself.

The ALJ received testimony and documentary evidence. The record was closed and the matter was submitted for decision on February 9, 2026.

SUMMARY

Respondent appeals CalPERS's decision to deny his application for industrial disability retirement from employment as a dentist. The parties each presented medical opinion evidence on whether respondent was substantially incapacitated from the performance of his usual and customary duties as a dentist when he retired. Because CalPERS's evidence is more convincing, respondent's appeal will be denied.

FACTUAL FINDINGS

Procedural Background

1. Respondent was employed as a dentist by the California City Correctional Facility, California Department of Corrections and Rehabilitation (CDCR). By virtue of his employment, respondent was a state safety member of CalPERS.

2. On March 18, 2024, respondent applied to CalPERS for disability retirement based on orthopedic conditions involving his neck, right wrist, and right shoulder. In his application, respondent maintained that his disability resulted from repetitive motion required by his employment, which rendered him unable to properly grip his dental instruments and to perform "fine dental art work," such as cleaning and performing extractions. (Ex. 4, p. A25.)

3. At the request of CalPERS, John Kaufman, M.D., performed an independent medical examination (IME) of respondent on October 17, 2024. Dr. Kaufman provided a written report of his examination. (Ex. 9.)

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4. On December 13, 2024, CalPERS sent respondent a letter stating that his industrial disability retirement application had been denied, but he would continue to receive his service retirement benefits. CalPERS stated that it had reviewed medical reports from Mohammed Amjad Ali Kghn, M.D., Vikas Jindal, M.D., Richard Nussbaum, M.D., and Dr. Kaufman and, based on that review, concluded respondent's orthopedic conditions are not disabling. (Ex. 5.) Respondent requested an appeal of that determination on January 7, 2025.

5. Sharon Hobbs, Chief of the Disability and Survivor Benefits Division of CalPERS, filed the Statement of Issues on July 24, 2025, while acting in her official capacity.

6. This hearing ensued.

Respondent's Job Duties

7. Respondent was employed as a dentist with the CDCR for 15 years, and previously worked in private practice for three years and in a public health clinic for four years.

8. Respondent normally worked 40 hours per week as a dentist with the CDCR. Respondent's job duties involved providing dental treatment to inmates, which included extractions, endodontic procedures, examinations, and teeth cleaning. His work required him to constantly stand, walk, perform fine manipulation, push and pull, bend, grasp and grip, twist, turn, kneel, squat and stoop, and reach at or above the shoulder. It also required respondent to lift up to 20 pounds frequently.

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Respondent's Evidence

RESPONDENT'S STATEMENT

9. In support of his appeal, on January 7, 2025, respondent provided a statement describing the onset and progression of his disability and the medical treatment he has received. Respondent first sought treatment for neck pain on February 24, 2020, and his physician prescribed neck exercises. Respondent again sought treatment for his neck on November 11, 2020, and received several sessions of physical therapy. On July 14, 2021, respondent sought treatment for right shoulder pain, and received six sessions of physical therapy. On December 28, 2021, respondent received an x-ray of his cervical spine, which revealed moderate degenerative changes at the C-3, C-4, C-6, and C-7 vertebrae. Respondent continued to receive physical therapy, and began having insomnia in 2022. Respondent again sought treatment for neck pain on October 18, 2023, and obtained prescription medication on November 3, 2023. Dr. Jindal, respondent's physician at the time, placed him on modified work duty on December 1, 2023, and on permanent modified work duty on January 17, 2024. Currently, respondent receives physical therapy and chiropractic treatment for his shoulder and neck pain. (Ex.6.)

MEDICAL REPORTS

10. According to his January 14, 2026 report, Dr. Jindal, an occupational medicine specialist, diagnosed respondent with right rotator cuff syndrome, cervical radiculopathy, right arm paresthesia, and right carpal tunnel syndrome. Dr. Jindal based his conclusions on respondent's complaints of worsening pain, stiffness, numbness, and spasm. Dr. Jindal prescribed muscle relaxants to treat respondent's complaints. (Ex. A, p. B6.)

11. Respondent submitted a May 28, 2024 medical evaluation report from Dr. Nussbaum, a Panel Qualified Medical Evaluator for the State Compensation Insurance Fund and orthopedic surgeon, who examined respondent in connection with his workers' compensation claim relating to injuries sustained while working as a dentist for CRCR. Dr. Nussbaum's report noted medical records from October 2023 describing an MRI of respondent's neck and right shoulder showing a partially torn rotator cuff, for which respondent took ibuprofen and was receiving physical therapy. (Ex. A, p.B15.) In addition, an EMG/NCS of the right shoulder, arm, and wrist taken on December 20, 2023, showed normal nerve and muscle function, and no evidence of right carpal tunnel syndrome or right cubital tunnel syndrome. (Ex. A, p. 15.) Dr. Nussbaum's report also noted x-rays taken on May 28, 2024, of respondent's cervical spine, right wrist, and right shoulder. Dr. Nussbaum found these x-rays revealed no narrowing of the cervical spine; uncovertebral joint arthrosis; a normal glenohumeral joint and acromion of the right shoulder; and a normal distal radioulnar joint and carpal bones of the right wrist. (Ex. A, p. B21.) Dr. Nussbaum observed a decreased range of motion of 45 degrees on internal rotation and 50 degrees on extension in respondent's right shoulder, and an overall loss of motion in respondent's cervical spine. Based on his examination and review of respondent's medical records, Dr. Nussbaum diagnosed respondent with cervical spondylosis; impingement syndrome of the right shoulder; and right wrist strain, and provided a differential diagnosis of cervical stenosis. Dr. Nussbaum found respondent to be temporarily partially disabled, and that he should be restricted from performing work involving repetitive neck movement (no more than four hours during an eight-hour shift); repetitive gripping, grasping, or fine manipulation using the right hand; and overhead lifting, pushing, or pulling over 10 pounds.

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12. On June 3, 2025, respondent was again examined by Dr. Nussbaum, because respondent's condition had not "reached maximal medical improvement" at the time of his initial evaluation. Dr. Nussbaum also wanted to consider a more recent MRI of respondent's cervical spine and right wrist, and he review additional medical records from 2024 and 2025 supplied by respondent. (Ex. A, p. B37.) Based on his examination of respondent, Dr. Nussbaum found tightness in respondent's paraspinal muscles and tenderness of the biceps tendon in the right shoulder, and no swelling or tenderness in the right elbow and right wrist. (Ex. A, pp. B52-53.)

13. In his report, Dr. Nussbaum noted that respondent reported an automobile accident in April 2024 that resulted in injuries to his right elbow, low back, and right knee. However, respondent had not informed Dr. Nussbaum about the accident during his initial evaluation on May 28, 2024, and respondent had completed the treatment he needed due to his accident. Dr. Nussbaum found that respondent's injuries resulted from continuous trauma, not the accident, and that "[r]eview of the overall medical records did not provide new information or discovery pointing against my previously held opinion on causation, [which] remain[s] unchanged." (Ex. A, p. B58.)

14. Dr. Nussbaum concluded that respondent should have the same work restrictions he stated in his earlier report on a permanent basis. However, Dr. Nussbaum stated:

I do not believe that [respondent] will be able to re-engage in the usual customary duties of his pre-injury vocation as a dentist. Failure of the employer's accommodation of the above prescribed work restrictions will qualify the patient for vocational rehabilitation.

[Respondent] also informed my office that he is currently working part-time as an administrator for a non-profit organization. He just recently started [a] few months ago. In my medical opinion, he may reasonably continue to engage in the regular duties of his alternative job on a part-time basis if these fall within my prescribed work restrictions.

(Ex. A, p. B62.)

RESPONDENT'S TESTIMONY

15. Respondent testified that he is unable to perform his usual and customary duties as a dentist at the CDCR because he cannot perform the necessary fine motor manipulations. Respondent asserted his injuries resulted from repetitive use of his right shoulder, arm, wrist, and hand from the years of practicing dentistry. Although respondent maintains limited use of his neck, right wrist, and right shoulder, he cannot sustain the demands of his employment because of pain and weakness caused by their continuous use. Respondent cited as evidence the two full examinations he received from Dr. Nussbaum on May 28, 2024, and on June 3, 2025. Respondent noted that it might be possible for him to perform his job duties part-time, such as the four hours a day found by Dr. Nussbaum, but he could not do so on an ongoing basis for eight hours a day.

CalPERS's Evidence

DR. KAUFMAN'S EXAMINATION AND TESTIMONY

16. Dr. Kaufman testified about his evaluation of respondent on behalf of CalPERS. Dr. Kaufman also prepared a written report of the evaluation, which was

admitted into evidence. (Ex. 9.) Dr. Kaufman is Board-certified in orthopedic surgery, and has 50 years of experience as an orthopedic surgeon. He retired from his practice a year ago, but still performs medical reviews for CalPERS and is familiar with its governing standards.

17. In his testimony and in his report, Dr. Kaufman opined that respondent was not substantially incapacitated for the performance of duty as a dentist. Dr. Kaufman reviewed respondent's medical records, took a detailed medical history from respondent, and performed a physical examination. Dr. Kaufman's physical examination revealed a slight spasm in respondent's neck and slight tenderness over the right trapezius muscle. Dr. Kaufman observed no atrophy in neck, right shoulder, and right wrist, and respondent demonstrated good muscle strength in both shoulders and wrists. (Ex. 9, p. A59.) Respondent demonstrated a limited range of motion in the right shoulder of 110 degrees of flexion and 90 degrees of abduction, and a slight crepitus in flexion and extension of the right wrist. Based on his examination and review of records, Dr. Kaufman diagnosed respondent with a small rotator cuff tear of the right shoulder, but found no objective evidence of carpal tunnel syndrome or pathology related to the cervical spine. Dr. Kaufman concluded that respondent did not have any orthopedic impairment that rose to the level of substantial incapacity to perform his usual duties as a dentist.

18. On November 26, 2024, Dr. Kaufman provided a supplemental report addressing Dr. Nussbaum's May 28, 2024 report recommending respondent be restricted from performing work involving any repetitive movement of the neck and the right hand and limiting overhead lifting and no pushing or pulling over 10 pounds. Dr. Kaufman disagreed with Dr. Nussbaum's report because there was no objective

evidence of pathology related to respondent's cervical spine, wrists, or right shoulder. (Ex. 11, p. A69.)

19. On January 30, 2026, Dr. Kaufman provided a supplemental record review report addressing Dr. Jindal's January 14, 2026 progress report, and Dr. Nussbaum's June 3, 2025 report. Dr. Kaufman stated that these more recent reports did not change his conclusion that respondent had no orthopedic impairment that substantially incapacitated him from performing his usual duties as a dentist. (Ex. 15, p. A79.)

20. Dr. Kaufman testified objective testing, including respondent's MRIs and x-rays, did not support Dr. Nussbaum's recommended restrictions or Dr. Jindal's diagnoses. According to Dr. Kaufman, the opinions of Dr. Jindal and Dr. Nussbaum were based in part on subjective criteria, such as respondent's pain complaints and ranges of motion observed in their physical examinations. Although Dr. Kaufman observed that respondent exhibited a limited range of shoulder motion, Dr. Kaufman observed no muscle atrophy to indicate respondent was not using his right shoulder properly. In addition, Dr. Kaufman stated that respondent's partial tear of the rotator cuff would not limit respondent from performing his job duties as a dentist. Dr. Kaufman clarified that the additional X-rays and MRI from 2024 did not reveal any injury that would substantially incapacitate respondent from performing his job. To credit respondent's primary complaints of pain, Dr. Kaufman would need to substantiate them with additional objective findings, such as atrophy, redness, or swelling. Dr. Kaufman did not see any such evidence based on his physical examination of respondent. Dr. Kaufman concluded that the objective findings of mild muscle spasm and a small rotator cuff tear of the right shoulder did not demonstrate an impairment that substantially incapacitated respondent from performing his usual duties as a dentist.

Analysis of Evidence

21. CalPERS's medical opinion evidence that respondent was not incapacitated for the performance of his job duties was more persuasive than respondent's medical opinion evidence that he was. Dr. Kaufman's medical opinions were well-supported and compelling because they were based on clinical testing, such as x-rays and MRIs. In addition, Dr. Kaufman's findings were further supported by the lack of atrophy, redness, and swelling in respondent's right shoulder and arm, as well as respondent's good muscle strength. Furthermore, Dr. Kaufman's medical opinions were consistent with the December 20, 2023 EMG/NCS, which showed normal nerve and muscle function. Although Dr. Jindal and Dr. Nussbaum also considered clinical testing in their reports, their reports were based in part on subjective evidence of respondent's pain complaints and ranges of motion they observed in their examinations of respondent.

22. Respondent's medical opinion evidence also consisted of hearsay statements by Dr. Nussbaum and Dr. Jindal. "Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." (Evid. Code, § 1200, subd. (a).) In this administrative case, hearsay evidence may be used to supplement or explain other evidence "but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." (Gov. Code, § 11513, subd. (d).)

23. CalPERS timely objected to the reports of Dr. Jindal and Dr. Nussbaum as hearsay, and the reports would not be admissible over a hearsay objection in civil actions. Therefore, the medical opinions in those reports are not sufficient in themselves to support a finding that respondent was incapacitated for the

performance of his job duties. Respondent presented no other medical opinion evidence. Dr. Kaufman's medical opinion evidence therefore has more convincing force than respondent's limited medical opinion evidence.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Employees seeking a service-connected disability retirement bear the burden of proving they are substantially incapacitated for the performance of their duties by a preponderance of the evidence. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332; *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5; *Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 691; Evid. Code, §§ 115, 500.) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Applicable Statutes

2. "Any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, regardless of age or amount of service." (Gov. Code § 21151, subd. (a).) Government Code section 20026 defines the terms "disability" and "incapacity for performance of duty," when used as a basis for retirement, to mean a "disability of permanent or extended and uncertain duration, which is expected to last at least 12 consecutive months, as determined by the board" that is based on "competent medical opinion."

3. According to Government Code section 21152, subdivision (d), an application for retirement for disability may be made by a member or any person on his or her behalf. On receipt of the application for retirement for disability, "the board shall request the governing body of the contracting agency employing the member to make the determination" whether the member is incapacitated for the performance of duty. (§ 21154.)

4. "If the evidence demonstrates that the member 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." (Gov. Code, § 21156, subd. (a)(1).) "Incapacitated" under Government Code section 21156 means the person must be substantially unable to perform his or her usual job duties. Disability is not an inability to perform fully every function of a given position. When a person can perform his or her usual and customary job duties, even though doing so may be difficult or painful, the employee is not substantially incapacitated. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 886–87.) Mere difficulty in performing certain tasks is also not enough to support a finding of disability. (*Hosford v. Bd. of Administration* (1978) 77 Cal.App.3d 854, 862.)

Analysis

5. Respondent did not carry his burden of proof. The only medical opinion evidence he presented from Dr. Nussbaum and Dr. Jindal was admitted solely as administrative hearsay evidence. This evidence is insufficient to support a finding that respondent was incapacitated for the performance of his duties as a dentist. (Gov. Code 1153, subd. (d).) On the other hand, Dr. Kauffman's opinion and testimony presented by CalPERS that respondent was not substantially incapacitated for the

performance of his usual and customary duties as a dentist was well-supported and more convincing than respondent's limited medical evidence.

6. Dr. Nussbaum's proposed limitations on respondent's employment do not by themselves establish qualification for a disability retirement, as they were rendered in connection with respondent's workers' compensation claim. (*Harmon*, 62 Cal.App.3d at 693-94.) Generally, a workers' compensation appeals board proceeding concerns whether the employee suffered any job-related injury, and if that injury resulted in some permanent residual loss, then the workers' compensation appeals board awards the employee a permanent disability rating. Retirement boards, on the other hand, focus on a different issue: whether an employee has suffered an injury or disease of such magnitude and nature that he or she is incapacitated from substantially performing his or her job responsibilities. Because of the differences in the issues, "[a] finding by the [workers' compensation appeals board] of permanent disability, which may be partial for the purposes of workers' compensation, does not bind the retirement board on the issue of the employee's incapacity to perform his duties. [Citation.]" (*Bianchi v. City of San Diego* (1989) 214 Cal App 3d 563, 567.)

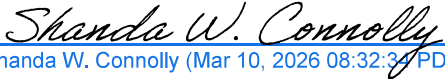
7. Finally, although respondent claims the pain in his neck, right shoulder, and right wrist render him unable to perform his job as a dentist, respondent's pain complaints are insufficient to prove he is "incapacitated" for the performance of job duties under Government Code section 21156, as explained in *Mansperger* and *Hosford*. Notwithstanding his pain, respondent has not shown he is substantially unable to perform his usual job duties in order to support a finding of disability in this case.

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ORDER

Respondent's appeal is denied.

DATE: 03/10/2026


Shanda W. Connolly (Mar 10, 2026 08:32:37 PDT)

SHANDA W. CONNOLLY

Administrative Law Judge

Office of Administrative Hearings