

ATTACHMENT A
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:

DARIO GODINEZ,

Respondent,

and

HOUSING AUTHORITY OF THE CITY OF LOS ANGELES,

Respondent.

Agency Case No. 2025-0099

OAH No. 2025110903

PROPOSED DECISION

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 5, 2026.

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

Respondent Dario Godinez appeared on his own behalf, and he was assisted by a Spanish-speaking interpreter. The Housing Authority of the City of Los Angeles (Authority) defaulted by failing to appear at the hearing. (Gov. Code, § 11520.) Although the Authority is also a respondent in this case, all references to “respondent” shall refer only to respondent Dario Godinez.

Evidence was received, the record closed, and the matter was submitted for decision on March 5, 2026.

SUMMARY OF CASE

Respondent suffered injuries to his shoulder and knees because of a workplace accident. He contends he is entitled to disability retirement benefits because those injuries prevented him from working as a Plasterer. Respondent did not prove his entitlement to such benefits. Persuasive, competent medical evidence demonstrated that the condition of respondent’s knees and shoulder would not prevent him from performing the regular and customary duties of a Plasterer. Additionally, respondent’s reliance on his receipt of Social Security disability benefits to prove his eligibility to receive disability retirement benefits from CalPERS is misplaced, as the two programs have different eligibility criteria and serve different goals. CalPERS therefore correctly denied respondent’s application for disability retirement.

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FACTUAL FINDINGS

Jurisdictional Matters

1. CalPERS is the state agency responsible for administering retirement benefits to eligible employees. (Gov. Code, § 20000 et seq.) Respondent was employed as a Plasterer for the Authority. By virtue of his employment, respondent was a local miscellaneous member of CalPERS subject to Government Code section 21150.

2. According to the Statement of Issues, respondent retired from service effective July 1, 2023, and has been receiving his retirement allowance from that date. On March 4, 2024, respondent applied for service retirement and service pending disability retirement.

3. On April 4, 2024, respondent signed and filed a Disability Retirement Election requesting disability retirement (Application). The Application stated respondent was seeking disability benefits based on an injury he sustained to his left shoulder while working for the Authority on August 20, 2020. Specifically, respondent suffered a partial tear in his labrum after falling from a ladder while removing the ceiling from a kitchen in an Authority residential unit (August 2020 fall). Respondent reported in the Application that he could not do most of his job duties as a Plasterer because of the August 2020 fall. (Exhibit 3, p. A39.)

4. By letter dated October 22, 2024, CalPERS denied respondent's Application. The letter informed respondent that CalPERS had reviewed medical reports submitted by respondent's physician, as well as the report of the independent medical examiner assigned to evaluate respondent's medical condition and his ability to work as a Plasterer. The letter stated that, based on its review, CalPERS determined

respondent did not have an impairment that rose to the level of a substantial disability. On December 24, 2024, CalPERS affirmed its denial after receiving additional medical records from respondent documenting his physical condition.

5. Respondent timely appealed CalPERS's denial and requested an administrative hearing. In his appeal, respondent contends he has been unable to work because of pain in his left shoulder and right knee. Respondent states he was placed on permanent disability by the Social Security Administration (SSA) because of the injuries he sustained in the August 2020 fall. (Exhibit 6.)

6. On November 3, 2025, complainant, in her official capacity, signed and filed a Statement of Issues against respondent and the Authority. Complainant served notice of hearing as required by law.

Respondent's Employment

7. Respondent is 67 years old. He worked for approximately 25 years as a Plasterer for the Authority. Respondent suffered injuries from the August 2020 fall to his left shoulder and both knees.

8. After the August 2020 fall, the Authority placed respondent on light duty. In 2021, respondent underwent surgery on his right knee. In February 2022, respondent decided he could no longer work as a Plasterer because the conditions of his shoulder and knees continued to get worse, and he soon stopped working. In October 2023, respondent underwent surgery on his left shoulder.

9. At hearing, respondent asserted that he can no longer perform his work as a Plasterer competently because of his ongoing pain. Respondent also does not feel that his left arm is strong enough to engage in the requisite movements. In his letter

appealing CalPERS's denial, respondent stated he is "very limited to do things" and therefore "unable to continue working." (Exhibit 6.)

10. According to the Authority's Class Specification, a Plasterer performs journey-level plastering work on new construction, alterations, or repairs of dwelling units or other structures. A Plasterer's physical tasks include the removal of old plaster and the preparation of surfaces for plastering; masking work area with plastic; application of coats of plaster, lath, and stucco to walls and ceilings; use of hang tools, brushes, rollers, step, and extension ladders, drop cloths, scaffolding, and walking planks; and maintenance of tools and equipment in satisfactory working order. (Exhibit 12.)

11. The Authority completed a form entitled "The Physical Requirements of Position/Occupational Title," describing the physical requirements of the Plasterer position. According the form, to perform the work of a Plasterer, an individual must be able to constantly bend from his neck and frequently lift and carry objects weighing up to five pounds, squat, bend from the trunk, twist from the neck and trunk, reach above and below the shoulder, power grasp, handle items, and walk on uneven ground for between 2.5 and five hours a day. A Plasterer may occasionally be forced to sit, stand, walk, kneel, climb, push and pull, and pinch or pick up objects between 31 minutes and 2.5 hours. A Plasterer is infrequently required to lift objects weighing between 11 and 50 pounds, and is rarely required to lift objects weighing more than 50 pounds, run, or crawl. (Exhibit 11.)

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Respondent's Medical Records

12. Respondent offered medical records from Shaun Chandran, M.D., and from Concentra Health Services, in support of his disability, but neither Dr. Chandran nor anyone from Concentra Health Services testified at hearing.

13. An April 15, 2022 note from Concentra Health Services, as summarized by the independent medical examiner, confirms respondent underwent right knee arthroscopy, partial meniscectomy, and left shoulder manipulation under anesthesia after the August 2020 fall. The note states respondent is improved but still complains of pain in his shoulder. The note further states that respondent is performing his usual and customary job duties without difficulty. According to the note, respondent's then current work status included the following limitations: no lifting over five pounds, no prolonged standing or walking greater than 10 feet, no pushing or pulling over five pounds, no reaching above the shoulders, and no kneeling or squatting. (Exhibit 9, pp. A65–A66.)

14. Dr. Chandran is an orthopedic surgeon who has treated respondent's shoulder and knees after the August 2020 fall. In 2021, Dr. Chandran performed a right knee arthroscopy and partial meniscectomy on respondent. In July 2023, respondent sought treatment with Dr. Chandran for persistent shoulder pain. Dr. Chandran diagnosed respondent with mild left shoulder osteoarthritis with a circumferential tear of the labrum and subacromial impingement. At that time, Dr. Chandran stated respondent could continue with usual and customary work duties. (Exhibit 9, p. A67.) In October 2023, Dr. Chandran performed an arthroscopic left biceps tenodesis and subacromial decompression on respondent's left shoulder. (*Ibid.*) Six months after the shoulder surgery, Dr. Chandran reported respondent felt he had improved range of motion and had less pain. In November 2024, after respondent complained of pain in

his left knee, Dr. Chandran diagnosed respondent with left knee arthritis and medial and lateral meniscal tears. (Exhibit C, p. B20.)

15. According to the independent medical examiner's report, on April 9, 2024, and July 25, 2024, in a Physician's Report on Disability, Dr. Chandran states respondent's shoulder and knee injuries are work-related. Dr. Chandran further states respondent is "currently, substantially incapacitated from performance of the usual duties of the position for their current employer." (Exhibit 9, pp. A67–A68.) The independent medical examiner's reference to Dr. Chandran's reports does not provide the reasons for Dr. Chandran's conclusion regarding respondent's inability to resume his duties as a Plasterer. Respondent provided no other records from Dr. Chandran to support Dr. Chandran's conclusion regarding respondent's physical incapacity to work as a Plasterer.

SSA Award

16. On December 26, 2023, the SSA found respondent to be disabled as of February 3, 2021. After reviewing respondent's medical records, the SSA concluded that the demands of respondent's work as a Plasterer exceeded respondent's residual functional capacity. The SSA also concluded that respondent could not perform a significant number of other jobs because of his limited functional capacity. Considering respondent's age, education, work experience, functional capacity, and availability of other employment, the SSA found respondent eligible to receive Social Security disability benefits. (Exhibit A, pp. B10–B11.)

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Independent Medical Evaluation

17. CalPERS retained Pavel Moldavskiy, M.D., an orthopedic surgeon, to conduct an independent medical evaluation (IME) to determine whether respondent has a medical condition that substantially incapacitates respondent from performing his usual duties as a Plasterer for the Authority. Dr. Moldavskiy's IME consisted of an examination of respondent and a review of respondent's medical records from Dr. Chandran and from Concentra Health Services. Dr. Moldavskiy prepared a report of his findings dated September 29, 2024, and a supplemental report dated November 27, 2024. Dr. Moldavskiy's testimony at hearing mirrored the findings of his report and supplemental report.

18. On September 29, 2024, Dr. Moldavskiy performed an IME of respondent at Dr. Moldavskiy's office. During the evaluation, respondent told Dr. Moldavskiy about the August 2020 incident and the subsequent surgeries on his right knee in 2021 and on his left shoulder in October 2023. Respondent informed Dr. Moldavskiy that he continued to feel pain in both his left shoulder and right knee, post-surgery, and continued to have a limited range of motion in his left shoulder, which made it difficult for him to do activities over his head. Additionally, respondent told Dr. Moldavskiy that he could no longer climb ladders, lift more than five pounds on his left shoulder or with his left hand, or reach or pull with his left hand. Respondent also reported difficulties performing tasks such as vacuuming, carrying groceries, washing a car, taking care of the lawn, and making a bed, although he acknowledged he is still able to perform these tasks.

19. Dr. Moldavskiy's examination found no obvious gross deformities in respondent's left shoulder. Dr. Moldavskiy observed respondent had tenderness to palpation diffusely above the left shoulder. Dr. Moldavskiy concluded respondent's

range of motion for his left shoulder was the same as his right in the areas of extension and adduction, but 20 degrees less than normal in forward flexion, 50 degrees less than normal in abduction, and 50 degrees less than normal in internal and external rotation. Dr. Moldavskiy found respondent's left shoulder to be as strong as his right shoulder and within normal limits. Regarding grip strength, Dr. Moldavskiy found respondent's left side to be less in every muscle category than respondent's right side. The circumference measurements of respondent's two arms were one centimeter apart, while the measurements of respondent's two forearms were the same. Dr. Moldavskiy did not find the differences in respondent's grip strength or range of motion determinative of substantial disability. However, because of these differences, Dr. Moldavskiy concluded respondent's shoulder condition could make respondent's job as a Plasterer more difficult and painful, but not impossible.

20. With respect to respondent's right knee, Dr. Moldavskiy's examination found no gross atrophy or deformity. He noted respondent had tenderness to palpation over the right knee's medial joint. Dr. Moldavskiy observed that the range of motion for respondent's knees was normal. As with respondent's right shoulder, Dr. Moldavskiy found the condition of respondent's right knee could make his job as a Plasterer more difficult, but not impossible. Dr. Moldavskiy learned after he examined respondent of Dr. Chandran's diagnosis of arthritis and a tear of the lateral and medial meniscus in respondent's left knee. The new information did not alter Dr. Moldavskiy's position.

21. Dr. Moldavskiy found respondent to be fully cooperative with the physical exam, and did not observe respondent exaggerating his symptoms. Dr. Moldavskiy diagnosed respondent with left shoulder mild osteoarthritis with labral tear and right knee status post meniscal debridement with arthritis. Dr. Moldavskiy

concluded after he examined respondent and reviewed the available medical records that respondent did not have an actual and present orthopedic impairment in either his left shoulder or knees that rises to the level of substantial incapacity to perform his usual duties as a Plasterer. Dr. Moldavskiy explained respondent was not substantially incapacitated because respondent's condition would preclude him from performing his job duties. Dr. Moldavskiy acknowledged that respondent would incur more pain performing the necessary tasks as a Plasterer and some tasks would become more difficult, but the pain would not render such tasks impossible.

LEGAL CONCLUSIONS

1. Respondent is a local miscellaneous member of CalPERS subject to Government Code section 21150. To qualify for disability retirement, respondent must prove that, at the time he applied, he was "incapacitated physically or mentally for the performance of [his] duties " (Gov. Code, § 21156, subd. (a)(1).) As defined in Government Code section 20026, "disability" and "incapacity for performance of duty" as a basis of retirement, mean "disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board on the basis of competent medical opinion."

2. An applicant seeking service-connected disability retirement has the burden of proving his eligibility for such benefits. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051 fn. 5.) The burden of proof is by a preponderance of the evidence. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

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3. In *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876 (*Mansperger*), the court interpreted the term "incapacity for the performance of duty" to mean "the *substantial* inability of the applicant to perform his usual duties." (Italics in original.) Under *Mansperger*, that an applicant could not perform some job duties and could perform others only with difficulty did not constitute a substantial inability to perform the usual duties of a particular position. (*Id.*, at pp. 876–877.) Discomfort alone, even if it makes performance of one's duties more difficult, is insufficient to establish a substantial incapacity. (*Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 862.) Additionally, subjective complaints lacking competent medical evidence to substantiate them are insufficient to support a finding of permanent and substantial incapacity. (*Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 697.)

4. Findings of eligibility for workers' compensation or social security disability benefits are not evidence that an employee's injuries are substantially incapacitating for the purposes of disability retirement under CalPERS. Workers' compensation and SSA hearings involve different parties and focus on different issues than a CalPERS disability retirement hearing. Additionally, the showing of disability required by the workers' compensation program or the SSA is appreciably different from the showing required by CalPERS. For instance, respondent's age and the likelihood of finding other employment, factors considered in respondent's SSA hearing are not pertinent in determining his eligibility for CalPERS disability benefits. (See *Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207; *Pearl v. W.C.A.B.* (2001) 26 Cal.4th 189, 198.); *Bianchi v. City of San Diego* (1989) 214 Cal.App.3d 563.)

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Analysis and Determination

5. Respondent did not prove by competent medical evidence that he was substantially incapacitated from performing his usual and customary duties as a Plasterer at the Authority when he applied for CalPERS disability retirement. Contrary to respondent's claim, the SSA decision finding respondent eligible for SSA disability benefits is not binding upon CalPERS. Moreover, Dr. Chandran's medical records alone were insufficient to counter Dr. Modavskiy's testimony. The medical records submitted by respondent did not contain Dr. Chandran's objective findings and did not explain why respondent's physical condition precluded respondent from performing his job duties.

6. In contrast, Dr. Moldavskiy persuasively testified that the injuries respondent sustained from the August 2020 fall did not preclude respondent from working as a Plasterer for the Authority. His testimony was based on objective findings and detailed findings concerning the strength and range of motion of respondent's shoulder and knees. Although Dr. Moldavskiy agreed that respondent may suffer pain from his injuries and that pain may persist while performing some of the duties of a Plasterer, the evidence demonstrated that the pain was insufficient to substantially incapacitate respondent from performing the customary duties of a Plasterer.

7. Accordingly, respondent is not entitled to disability retirement benefits, pursuant to Government Code section 21156, subdivision (a)(1).

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ORDER

The appeal by respondent Dario Godinez is denied.

DATE: 04/06/2026

A handwritten signature in black ink, appearing to read 'Cindy F. Forman', with a long horizontal flourish extending to the right.

CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings