

**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:**

**BRAD E. THOMPSON and AVENAL STATE PRISON,  
CALIFORNIA DEPARTMENT OF CORRECTIONS AND  
REHABILITATION, Respondents**

**Agency Case No. 2024-0893**

**OAH No. 2025030383**

**PROPOSED DECISION**

Christopher W. Dietrich, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on March 25, 2026, by videoconference from Sacramento, California.

Austra Wakily, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Respondent Bradley E. Thompson, aka Brad E. Thompson (Mr. Thompson)<sup>1</sup> represented himself.

CalPERS properly served respondent Avenal State Prison, California Department of Corrections and Rehabilitation (CDCR) with the Statement of Issues and Notice of Hearing. CDCR made no appearance. This matter proceeded as a default against CDCR pursuant to Government Code section 11520, subdivision (a).

Evidence was received and the record held open to receive documentary evidence from Mr. Thompson. Mr. Thompson's evidence was marked as Exhibits A through F for identification. Exhibit A was admitted for all purposes. Exhibits B and C were excluded for lack of foundation. Exhibits D through F, consisting of identical copies of Exhibits A through C, were excluded as duplicative. The record then closed and the matter was submitted for decision on April 3, 2026.

## **ISSUE**

Was Mr. Thompson substantially incapacitated from performing his usual and customary duties as a Correctional Officer for the CDCR due to an orthopedic (right knee) condition when he filed his industrial disability retirement application?

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<sup>1</sup>Mr. Thompson testified that his name is Bradley E. Thompson and listed his name as such in his application for industrial disability retirement.

## FACTUAL FINDINGS

### Jurisdictional Matters

1. Mr. Thompson was employed by CDCR as a Correctional Officer at Avenal State Prison (Avenal). By virtue of his employment, Mr. Thompson is a state safety member of CalPERS subject to Government Code section 21151. On January 2, 2023, Mr. Thompson applied for industrial disability retirement with CalPERS based upon an orthopedic (right knee) condition.

2. In his application, Mr. Thompson represented that his disability occurred on March 20, 2019. He wrote that "while running in response to an alarm, I stepped on uneven cracked pavement and stumbled, which resulted in injury to my right knee." He described his disability as a "complex tear to the posterior horn of the medial meniscus with what appears to be healing chondral defect of the medial femoral condyle."

3. Mr. Thompson submitted medical records to CalPERS for its review. Pavel Moldavskiy, M.D., conducted an independent medical examination (IME) of Mr. Thompson on CalPERS's behalf. Based upon review of medical records and Dr. Moldavskiy's IME report, CalPERS determined that Mr. Thompson was not substantially incapacitated from the performance of his duties as a Correctional Officer and denied his application. On September 16, 2024, CalPERS notified Mr. Thompson of its determination.

4. Mr. Thompson timely appealed CalPERS's denial. On February 6, 2025, Sharon Hobbs, Chief of CalPERS's Disability and Survivor Benefits Division, acting solely in her official capacity, signed and thereafter filed a Statement of Issues

regarding Mr. Thompson's appeal. The matter was set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

## **Duties of Correctional Officer**

5. CDCR Correctional Officers work in assigned correctional institutions or work camps. They perform peace officer duties to prevent inmates from escaping or causing injury to themselves, employees, or other inmates. Correctional Officers must be able to restrain and use force against inmates, as needed.

6. The physical requirements for a Correctional Officer include standing, walking, running, kneeling, climbing, squatting, and bending for hours at a time. Additionally, they may occasionally be required to lift and carry objects weighing 50 pounds or more.

## **Boyd Johnson, D.O.'s Testimony**

7. Boyd Johnson, D.O., is a primary care physician in Visalia, California. He has practiced as a family medicine physician for 22 years. Additionally, he has assisted patients in workers' compensation matters for the past 15 years. Dr. Johnson has been Mr. Thompson's physician since April 2019.

8. Dr. Johnson explained the history of Mr. Thompson's injury. Mr. Thompson was unable to bear weight on his right leg when Dr. Johnson first examined him in April 2019. Mr. Thompson's initial x-rays did not show a fracture. Dr. Johnson directed Mr. Thompson to use crutches to keep weight off of his right leg. Additionally, he prescribed oral pain medication and Voltaren gel to alleviate Mr. Thompson's pain.

9. Dr. Johnson referred Mr. Thompson for an MRI which showed an impact fracture and a medial meniscus tear on Mr. Thompson's right knee. Meniscus is protective cartilage over the knee bone that allows for smooth movement of the knee. Dr. Johnson explained that meniscus tears vary in severity. Small tears may cause moderate pain during walking. Large tears can cause severe pain and swelling. Dr. Johnson further explained that there are various treatment options for meniscal tears. Meniscus tears will often heal on their own with rest. Additionally, a torn meniscus can be sewn, trimmed, or cut out to aid in proper healing. Dr. Johnson explained that an OATS procedure is a viable treatment option for meniscus tears. However, he did not explain what an OATS procedure is.

10. Dr. Johnson subsequently referred Mr. Thompson to an orthopedic surgeon after his injury did not heal as expected. Mr. Thompson was seen by orthopedic surgeon Jerome Dunklin, M.D., for an osteochondral drilling procedure in January 2020. Dr. Johnson explained that this procedure is performed by drilling holes in the bones near damaged cartilage. This procedure is intended to aid healing by promoting blood flow near damaged cartilage.

11. Dr. Johnson reviewed Mr. Thompson's job duty statement and completed a return-to-work report for Mr. Thompson dated October 27, 2022. In the report, Dr. Johnson indicated that Mr. Thompson was able to lift up to 10 pounds and walk and stand for two to three hours per day. However, Mr. Thompson was unable to crawl, kneel, squat, climb, or run. At hearing, Dr. Johnson explained that Mr. Thompson would be unable to run in response to an alarm, defend himself against inmates, and detain inmates as needed. He opined that Mr. Thompson may be able to perform some of these functions occasionally but would be unable to do so in a "competitive

work environment” where employees are expected to repeatedly perform these physical tasks.

12. Dr. Johnson last examined Mr. Thompson in March 2026. At the time of the examination, Mr. Thompson’s right knee was not swollen and his ligaments were intact. However, Mr. Thompson’s right knee strength was poor. Mr. Thompson reported that it was painful for him to bend his knee, kneel, squat, and walk. Dr. Johnson’s opinion regarding Mr. Thompson’s limitations was unchanged following his most recent examination.

13. Dr. Johnson testified that he has evaluated patients’ limitations in approximately 10 to 15 CalPERS matters. However, he was unfamiliar with the substantial incapacity standard and did not articulate whether Mr. Thompson’s injuries were substantially incapacitating.

### **Independent Medical Examination**

14. Dr. Moldavskiy graduated from the University of Southern California’s Keck School of Medicine in 2012. He completed a residency in orthopedic surgery with the Los Angeles County Hospital. He is a board-certified orthopedic surgeon with a specialty certificate in hand surgery. Dr. Moldavskiy treats patients in clinic, performs orthopedic surgeries, and evaluates individuals in workers’ compensation matters.

15. CalPERS engaged Dr. Moldavskiy to conduct an IME of Mr. Thompson by letter dated July 3, 2024. CalPERS directed Dr. Moldavskiy to opine whether Mr. Thompson’s right knee impairment caused him to be substantially incapacitated from the performance of his duties. In their engagement letter, CalPERS instructed Dr. Moldavskiy regarding the qualifications for disability retirement as follows, in relevant part:

To qualify for a disability retirement, a CalPERS member must be substantially incapacitated for the performance of their duties. This "substantial incapacity" must be due to a medical condition of permanent or extended duration that is expected to last at least 12 consecutive months or will result in death. Where the medical condition would likely be responsive to reasonable treatment if the member were to undertake it and the member unreasonably refuses to undertake such treatment, the member may not be entitled to a disability retirement.

The law distinguishes between a person who suffers some impairment and one who suffers impairment sufficient to become eligible for disability retirement. The courts have concluded that the test is whether the member has a substantial inability to perform the usual and customary duties of the position. Difficulty in performing certain tasks alone is not enough to support a finding of disability. It is the inability to perform the essential functions of the actual and present job duties that determines whether the member is substantially incapacitated for the performance of their job duties.

(Grammar in original.)

16. Dr. Moldavskiy examined Mr. Thompson on July 13, 2024. He reviewed Mr. Thompson's medical records and job duty statement. He completed a report following his examination and testified at hearing.

17. Dr. Moldavskiy performed a physical examination of Mr. Thompson. In Dr. Moldavskiy's opinion, Mr. Thompson was cooperative throughout the examination and did not appear to be exaggerating his symptoms. Mr. Thompson's right knee showed no deformity and was anatomically aligned. Dr. Moldavskiy observed healed portal sites from a surgical procedure above Mr. Thompson's right knee. Mr. Thompson's right thigh muscle measured three centimeters smaller than his left thigh muscle, indicating muscle atrophy. Dr. Moldavskiy attributed the difference in muscle mass to Mr. Thompson favoring his left leg over his right. Mr. Thompson experienced pain when Dr. Moldavskiy pressed on the inside of his right knee.

18. Dr. Moldavskiy examined the range of motion in both of Mr. Thompson's knees. The flexion range of Mr. Thompson's right knee was 114 degrees, which is less than the normal range of 130 degrees. Dr. Moldavskiy opined that this reduced range of motion would make squatting movements difficult for Mr. Thompson, but not impossible. This reduced range of motion would not prevent Mr. Thompson from being able to bend, kneel, or stoop.

19. Dr. Moldavskiy summarized portions of Mr. Thompson's medical records. A June 27, 2019 MRI showed that Mr. Thompson had a small medial femoral impaction fracture with an associated medial meniscal tear. On January 23, 2020, Dr. Dunklin performed a partial medial meniscectomy and debridement of scar tissue. Dr. Moldavskiy explained that this procedure was done to "clean up" and remove damaged portions of Mr. Thompson's meniscus. Dr. Dunklin's medical records revealed that he discussed the option of performing an osteochondral drilling procedure with Mr. Thompson. However, Dr. Moldavskiy did not receive records showing that Dr. Dunklin completed this procedure.

20. Mr. Thompson's records further showed that he completed a qualified medical evaluation with Payam Moazzaz, M.D., in a workers' compensation matter. Dr. Moazzaz recommended that Mr. Thompson undergo an OATS procedure to treat the impaction fracture in his right knee femoral condyle. Dr. Moldavskiy explained that this procedure is performed by taking a patient's cartilage from a non-weight bearing area and placing it at the impaction site to promote healing. Dr. Moldavskiy testified that the OATS procedure alleviates pain for approximately 70 percent of participants aged 50 and older. He opined that Mr. Thompson would be a good candidate for this procedure. He further opined that osteochondral drilling would be a viable alternative treatment for Mr. Thompson. Mr. Thompson's medical records indicate that he declined to undergo the OATS procedure.

21. Dr. Moldavskiy diagnosed Mr. Thompson with a right knee meniscal tear with osteochondral defect. Based upon review of Mr. Thompson's medical records and his examination, Dr. Moldavskiy concluded that Mr. Thompson was not substantially incapacitated from the performance of his duties, utilizing the standard for substantial incapacity as articulated in CalPERS's engagement letter. He explained that Mr. Thompson's injury was "relatively minor" and would make performing certain duties more difficult, but not impossible. Additionally, he found that Mr. Thompson was not substantially incapacitated because he refused further reasonable treatment for his injuries.

### **Mr. Thompson's Testimony**

22. Mr. Thompson is 55 years old. He started working as a Correctional Officer at Avenal in October 2009. On March 20, 2019, while working at Avenal, he fell while running in response to an alarm and injured his right knee. He did not return to work at Avenal thereafter. His fracture never healed properly and he still experiences

sharp, stabbing pain in his knee anytime he bears weight on his right leg. He explained he would be “in a world of hurt” if he attempted to work as a Correctional Officer.

23. Mr. Thompson explained his decision not to undergo an OATS procedure. He discussed this procedure with Dr. Dunklin and researched the procedure. Through his research, he learned that the procedure had a 20 percent success rate for patients over 50 years old. He decided against receiving this treatment believing that the chances of success did not justify the pain and risk associated with the procedure.

## **Analysis**

24. Mr. Thompson bears the burden of proving by a preponderance of the evidence that he is entitled to industrial disability retirement benefits. Specifically, he must demonstrate, through competent medical evidence, that he is permanently and substantially unable to perform his job duties. The undisputed evidence established that Mr. Thompson injured his right knee while working at Avenal and that he experiences ongoing pain resulting from this injury.

25. Drs. Johnson and Moldavskiy presented conflicting opinions regarding whether Mr. Thompson is substantially incapacitated and unable to perform his job duties. Dr. Moldavskiy’s conclusions were more persuasive than Dr. Johnson’s. Based upon his education and specialty in orthopedic medicine, Dr. Moldavskiy is more qualified than Dr. Johnson to opine regarding the extent of Mr. Thompson’s orthopedic injury. Further, Dr. Moldavskiy provided more detailed testimony regarding his examination of Mr. Thompson. His examination supported his conclusion that Mr. Thompson’s injury was minor and not substantially incapacitating.

26. Dr. Johnson did not apply or demonstrate an understanding of the substantial incapacity standard used in CalPERS industrial disability retirement matters. In contrast, Dr. Moldavskiy assessed Mr. Thompson's ability to perform his job duties under the applicable substantial incapacity standard. As such, Dr. Moldavskiy's opinion was more competent and reliable than Dr. Johnson's. (See *In re Application for Reinstatement from Industrial Disability Retirement of Willie Starnes* (2000) CalPERS Precedential Decision No. 99-03 [In industrial disability retirement matters, "the competency of medical opinion . . . is evidenced by the physician's knowledge and application of the CalPERS disability retirement standard to the particular job duties required of the applicant."].)

27. Mr. Thompson's unreasonable refusal to undergo further treatment to remedy his injury prevents a determination that his injuries are permanently incapacitating. (See *Reynolds v. City of San Carlos* (1981) 126 Cal.App.3d 208, 216 [Disability retirement benefits may be denied to an applicant who unreasonably refuses remedial treatment.]) Competent medical opinion established that the OATS procedure has a high probability of alleviating the impacts of Mr. Thompson's injury. Although Mr. Thompson believes that this procedure has a low probability of success, he offered no competent medical evidence to support this conclusion. (See Evid. Code, §§ 702, subd. (a) [a lay witness may only testify regarding matters within their personal knowledge], 800, subd. (a) [a lay witness's opinion testimony must be "rationally based on the perception of the witness."].)

28. Considering all the evidence, a preponderance of the evidence did not establish that Mr. Thompson's right knee injury rendered him incapacitated and unable to perform his usual duties when he applied for industrial disability retirement. Therefore, his appeal must be denied.

## LEGAL CONCLUSIONS

1. An applicant for industrial disability retirement bears the burden of proving, through competent medical evidence, that they are permanently and substantially unable to perform their usual duties. (*Harmon v. Bd. of Retirement of San Mateo County* (1976) 62 Cal.App.3d 689, 697; *Glover v. Bd. of Retirement* (1989) 214 Cal.App.3d 1327, 1332.) The standard of proof is a preponderance of the evidence (Evid. Code, §§ 115, 500), which means, "more likely than not." (*Sandoval v. Bank of America* (2002) 94 Cal.App.4th 1378, 1388.)

2. Government Code section 21151, subdivision (a) provides:

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.

3. To qualify for industrial disability retirement, an applicant must prove they are "incapacitated physically or mentally for the performance of [their] duties." (Gov. Code, § 21156, subd. (a)(1).) Government Code section 20026 defines "disability" and "incapacity for performance of duty" as a basis of retirement, to mean "disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death . . . on the basis of competent medical opinion."

4. As set forth in the Factual Findings, Mr. Thompson failed to establish, based upon competent medical evidence, that he was incapacitated for the

performance of his duties when he applied for industrial disability retirement.  
Consequently, his appeal must be denied.

## **ORDER**

Respondent Brad E. Thompson's application for industrial disability retirement is  
DENIED.

DATE: April 20, 2026

*Christopher W. Dietrich*

Christopher W. Dietrich (Apr 20, 2026 14:34:49 PDT)

CHRISTOPHER W. DIETRICH

Administrative Law Judge

Office of Administrative Hearings