

ATTACHMENT A

THE PROPOSED DECISION

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

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

DANIEL P. GRECO and COUNTY OF GLENN, Respondents

Agency Case No. 2024-0925

OAH No. 2025100242

PROPOSED DECISION

Brian Weisel, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 28, 2026, from Sacramento, California.

Austa Wakily, Senior Attorney, appeared on behalf of the California Public Employees' Retirement System (CalPERS).

Daniel P. Greco (respondent) appeared and represented himself.

CalPERS properly served the County of Glenn (County) with the operative pleading and Notice of Hearing. The County made no appearance. This matter proceeded as a default against the County pursuant to Government Code section 11520, subdivision (a).

Evidence was received on May 28, 2026. The record was held open to allow the parties to submit closing briefs, if desired. On June 4, 2026, CalPERS submitted its closing brief. That brief is marked for identification as Exhibit 16 and admitted as argument. The ALJ redacted respondent's date of birth from Exhibit 16 to protect respondent's privacy. Respondent did not file a closing brief. On June 8, 2026, the record closed and the matter was submitted for decision.

ISSUES

Whether: (1) CalPERS requiring respondent to undergo a medical examination under Government Code section 21192, to determine whether he continues to be substantially incapacitated, was timely in light of his age; and (2) respondent remains substantially incapacitated, on the basis of a psychological condition, for the performance of his usual duties as a Juvenile Hall Counselor II for the County.

FACTUAL FINDINGS

Background and Jurisdictional Matters

1. CalPERS is the state agency responsible for administering retirement benefits to eligible employees. (Gov. Code, § 20000 et seq.) The County is a contracting public agency with CalPERS. The County's qualified employees are members of CalPERS. The provisions for public agencies contracting with CalPERS are set forth in the Public Employees' Retirement Law (PERL).

2. Respondent worked for the County as a Juvenile Hall Counselor II. By virtue of his employment for the County, respondent was a local miscellaneous member of CalPERS.

3. On August 5, 2006, respondent filed a disability retirement election application with CalPERS based on reported back and shoulder injuries. On an unknown date, CalPERS denied respondent's request for disability retirement based on his back and shoulder injuries. However, by letter dated June 6, 2007, CalPERS approved respondent's application and retired him from service for disability based on a psychological condition, effective March 13, 2006. At the time of his disability retirement, respondent was under the age of 50.

4. CalPERS notified respondent by letters dated March 14, 2024, and April 17, 2024, that his disability benefits were under review pursuant to Government Code section 21192, to determine whether he continued to meet the qualifications to receive disability retirement benefits. At the time of CalPERS's letters, respondent was aged 48.

5. In connection with CalPERS's review of respondent's condition, CalPERS procured an independent medical examination (IME) to review the status of his disabling psychological condition. By letter dated October 16, 2024, CalPERS informed respondent that, as a result of its review of the IME report and his medical records, it determined that he was no longer disabled or incapacitated from the performance of his duties as a Juvenile Hall Counselor II for a psychological condition and thus he was being reinstated to that position with the County.

6. Respondent timely filed an appeal of CalPERS's determination that he is no longer disabled or substantially incapacitated. On July 15, 2025, Sharon Hobbs, in

her official capacity as Chief of the CalPERS Disability and Survivor Benefits Division, signed and subsequently filed an Accusation for the purpose of respondent's appeal. This hearing followed.

The Independent Medical Examination

7. CalPERS retained Alberto Lopez, M.D., M.P.H., to conduct respondent's IME. Dr. Lopez received his medical degree from Stanford University School of Medicine in 1979. Dr. Lopez completed his residency in psychiatry at the University of California at San Francisco Medical School (UCSF). He served as a psychiatrist for the City and County of San Francisco's Division of Mental Health and Substance Abuse for 30 years and acted as its Medical Director from 1992 through 1997. Dr. Lopez also served as a clinical professor at UCSF's Department of Psychiatry from 1986 until his retirement in 2012. Dr. Lopez has conducted thousands of psychological evaluations in his career.

8. Dr. Lopez examined respondent on September 19, 2024, at his office in Sacramento. At the time of the examination, respondent was aged 49.¹

9. Dr. Lopez administered the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) and considered CalPERS's substantial incapacity standard during his examination. He obtained respondent's history and reviewed respondent's medical records and the job duties of a Juvenile Hall Counselor II. Respondent's medical

¹ Respondent's date of birth is redacted from all exhibits to protect his privacy. As his date of birth is relevant when calculating the timeliness of CalPERS's disability retirement review, respondent stated his date of birth on the record at hearing.

records were incomplete in 2006 and 2007. However, it appears Michael Barnett, M.D., diagnosed respondent with clinical depression on March 16, 2007. Dr. Lopez authored a report on September 19, 2024, and testified regarding his examination and report.

10. Respondent presented at the examination as polite, well-groomed, and pleasant. Dr. Lopez noted respondent complained of inconsistent appetite and sleep. He reported he felt depressed approximately twice per week. Respondent also felt more depressed at the time of the examination because he was not working. He felt stress about his employment status and this appeal. He denied any suicidal ideation.

11. According to the results of the MMPI-2, respondent appeared to be inhibited and overcontrolled. He relies on denial and repression to cope with anxiety and conflict. He exhibits some difficulty managing routine affairs, memory, and concentration. His answers indicated some unrealistically virtuous ideation. A subject exhibiting denial and unrealistically virtuous ideations may downplay or deny their own flaws. The MMPI-2 accounts for this to some degree. However, denial or minimalization can affect the results of the MMPI-2 examination.

12. Nevertheless, Dr. Lopez opined that respondent's mental health status was normal. Respondent did not present any significant abnormalities in his medical history or the results of the MMPI-2 that would warrant a psychological diagnosis.

13. Respondent did not report any mental health treatment in the past 20 years. He told Dr. Lopez he does not need psychological treatment. Respondent worked at a casino since his retirement from the County until his recent leave from work for his foot injury without any significant psychological issues. Respondent has not taken any medication, received a diagnosis, or attended therapy since his depression diagnosis in 2007.

14. Dr. Lopez opined that respondent does not suffer from depressive disorder. Dr. Lopez did not diagnose any psychological disorder. Respondent reported some mild depression in the colloquial sense. However, the testing indicates his subjective depression does not rise to a level of a clinical diagnosis. Respondent's self-reported depression appears to increase or decrease based on the stresses he feels at any given time. That is normal. Any person would feel sad or "down" when they experience stressful events. A subject diagnosed with clinical depression would exhibit depressive tendencies irrespective of the ebbs and flows of everyday life. Dr. Lopez did not observe continued depressive thoughts consistent with a diagnosis.

15. As Dr. Lopez did not diagnose any psychological disorder, he opined that respondent is not substantially incapacitated for the performance of the duties of any position, including a Juvenile Hall Counselor II. He noted that respondent has worked the past 20 years without any known psychological impediment at a casino. Dr. Lopez opined there are no specific job duties for any position respondent cannot perform based on a psychological condition.

Respondent's Evidence

16. Respondent worked for the County as a Juvenile Hall Counselor II for over five years. In 2003 or 2004, he injured his back while on duty. He has dealt with back and shoulder issues since. Respondent's back injury caused him to miss work. Time off work caused respondent to feel depressed. Respondent stated when a physical injury "flares up," it causes him to feel depressed again. When CalPERS filed the instant Accusation, respondent felt the same mental health issues reemerge that he thought no longer remained. Respondent feels his psychological disability is linked to his physical injuries.

17. Respondent began work at Rolling Hills Casino and Resort in 2008 as a vault fill bank cashier. In 2021, he injured himself when a machine fell on his foot. He received treatment and returned to work for a few years. The foot injury still causes pain. Respondent is not currently working at the casino while he waits for foot surgery. He may have another legal matter pending regarding the injury to his foot and the casino, though that is unclear.

18. Respondent has not seen a psychiatrist or therapist. Respondent was raised to hide his emotions and work through problems without help from others. He deals with psychological issues in his "own way." He reports he has never missed a day of work at the casino for psychological issues.

19. Respondent is now 50 years old. He does not feel he is physically capable of working as a Juvenile Hall Counselor II again at his age with his current injuries and because of his back injury. Although he did not provide medical evidence to support his position, respondent believes his back injury would prevent him from taking down a subject at the juvenile facility, should a situation escalate. Even if he were nonetheless reinstated, respondent does not have anywhere to return to work because the juvenile facility where he previously worked has closed.

Analysis

TIMELINESS OF THE IME AND CALPERS'S DETERMINATION

20. Government Code section 21192 provides that CalPERS may require any disability retirement recipient, who is under the minimum age for voluntary service retirement, to undergo a medical examination to confirm a continued disability. Here, respondent's minimum age for voluntary service retirement at 50, given his over five years of service at the County. (Gov. Code., § 21060.) CalPERS sent its letters to

respondent requiring him to undergo a medical examination under Government Code section 21192 when respondent was aged 48. Dr. Lopez examined respondent when respondent was aged 49. CalPERS required respondent to undergo a medical examination under Government Code section 21192 while he was still under the minimum age for voluntary service retirement. The medical examination was thus timely.

21. Unlike the deadline imposed by Government Code section 21192 on the timing of the medical examination, there is no deadline for CalPERS to make a determination, based on the medical examination, whether a disability retirement recipient continues to be substantially incapacitated. Government Code section 21193 provides that if a recipient is found to not be incapacitated after a section 21192 examination, their disability retirement allowance shall be canceled and they shall return to CalPERS membership. Section 21193 does not provide a time by which CalPERS shall make their determination. Respondent is currently 50 and will be 51 this year. However, even though respondent is now older than the minimum age of voluntary service retirement, CalPERS's determination that he is no longer substantially incapacitated is not untimely.

RESPONDENT'S SUBSTANTIAL INCAPACITY

22. Dr. Lopez's IME report and testimony were persuasive. Dr. Lopez established that there is no objective medical evidence to support that respondent is substantially incapacitated based on a psychological condition. Respondent does not exhibit behavior consistent with a depression diagnosis. He has not sought treatment or taken medication for a psychological condition. He has worked for 20 years without missing work for a psychological issue. The evidence did not establish that he is unable to perform the duties of any position, including a Juvenile Hall Counselor II.

23. Respondent's claim that his physical ailments inform his feelings of depression was not persuasive. Respondent credibly stated he feels depressed in the colloquial sense of the word. However, Dr. Lopez persuasively opined that respondent's self-report of feeling depressed does not rise to the level of a clinical diagnosis. Respondent stated he feels more depressed when he is hurt or stressed. Dr. Lopez credibly explained that is inconsistent with a depression diagnosis.

24. Respondent credibly stated he suffers from physical ailments in his back and foot originating from his work as a Juvenile Hall Counselor II and his subsequent work at the casino. However, his original disability retirement application based on back and shoulder issues was denied. His disability retirement application was granted based only on a psychological condition. That condition no longer persists. Therefore, he must be reinstated to CalPERS membership.

25. Respondent stated his prior position may no longer be available. He may not be able to return to his old position for reasons unrelated to his previous psychological condition. However, the exact details of respondent's reinstatement are beyond the scope of this Decision. When he is returned to service, he may discuss his reinstatement options with the County or his employment or retirement options with CalPERS staff, including possible service retirement.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. CalPERS has the burden of proving by a preponderance of the evidence that respondent is no longer substantially incapacitated for the performance of his usual and customary duties as a Juvenile Hall Counselor II and should therefore be

reinstated. (*In the Matter of the Application for Reinstatement from Industrial Disability Retirement of Willie Starnes* (January 22, 2000) CalPERS Precedential Decision 99-03.) The term preponderance of the evidence means "more likely than not" (*Sandoval v. Bank of America* (2002) 94 Cal.App.4th 1378, 1387), or "evidence that has more convincing force than that opposed to it." (*People ex re. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Applicable Law

2. Disability as a basis of retirement means "disability of permanent or extended uncertain 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." (Gov. Code, § 20026.)

3. According to Government Code section 21156, subdivision (a)(1), "[i]f the medical examination and other available information show to the satisfaction of the board . . . that the member in the state service 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[.]"

4. "Incapacitated for the performance of duty" means "the substantial inability of the applicant to perform [their] usual duties." (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 877.) The person does not need to be able to perform all duties. (*Schrier v. San Mateo County Employees' Retirement Assn.* (1983) 142 Cal.App.3d 957, 961.) Mere discomfort, which may make it difficult for one to perform his duties, is insufficient to establish incapacity. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207.)

5. The minimum age for voluntary retirement from service is 50 years of age for those with at least five years of state service. (Gov. Code, § 21060, subd. (a).) CalPERS may require any recipient of a disability retirement allowance to undergo a medical evaluation at any time before reaching the minimum age for voluntary retirement from service. (Gov. Code, § 21192.) If a medical evaluation under section 21192 determines a recipient is not so incapacitated for duty in the position held when retired for disability, their disability retirement allowance is canceled immediately. (Gov. Code, § 21193.)

6. The analysis of whether a disability retirement recipient is "still incapacitated" from the performance of their usual job duties under Government Code section 21192 "is limited to determining whether the conditions for which disability retirement was granted continue to exist." (*Cal. Dept. of Justice v. Board of Administration etc.* (2015) 242 Cal.App.4th 133, 141.)

7. As discussed above, the record contains no competent medical evidence establishing that respondent remains substantially incapacitated on the basis of a psychological condition. Therefore, CalPERS has met its burden to show that respondent is no longer substantially incapacitated from the performance of his usual job duties as Juvenile Hall Counselor II. Thus, his disability retirement allowance shall be canceled immediately, and he shall return to CalPERS membership.

ORDER

CalPERS's determination that Daniel P. Greco is no longer substantially incapacitated for the performance of his usual duties as a Juvenile Hall Counselor II for the County of Glenn, on the basis of a psychological condition, is AFFIRMED. Daniel P.

Greco's appeal of reinstatement from disability retirement is DENIED. CalPERS may involuntarily reinstate respondent to his previous position of Juvenile Hall Counselor II.

DATE: July 2, 2026

Brian Weisel

[Brian Weisel \(Jul 2, 2026 14:37:29 PDT\)](#)

BRIAN WEISEL

Administrative Law Judge

Office of Administrative Hearings