ATTACHMENT A

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:

JESS A. SALCEDO and AVENAL STATE PRISON, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, Respondents

Agency Case No. 2024-0348

OAH No. 2026020557

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on September 3, 2026, by videoconference from Sacramento, California.

Sean M. Stowers, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Respondent Jess A. Salcedo represented himself.

No one appeared for or on behalf of respondent Avenal State Prison, California Department of Corrections and Rehabilitation (Department), its default was entered,

and this matter proceeded as a default proceeding pursuant to Government Code section 11520 as to the Department only.

Evidence was received, the record closed, and the matter submitted for decision on September 3, 2026.

FACTUAL FINDINGS

Pertinent Background

EMPLOYMENT

1. Respondent Salcedo began working for the Department as a correctional officer when he started the training academy in October 1988. He graduated from the academy and was assigned to a security housing unit in one of the Department's prisons. He continued working various assignments as a correctional officer throughout the Department, and at one point he transferred to the Central California Women's Facility in Chowchilla, California.

2. Respondent Salcedo transferred to Avenal State Prison in Avenal, California, in 1993. He was promoted to correctional sergeant. In 2007, he was promoted to correctional lieutenant, the position from which he eventually retired. He is a state safety member of CalPERS by virtue of his employment with the Department.

WORK INJURY

3. In February 2011, respondent Salcedo played the role of an inmate during a "live alarm response training." The correctional officers undergoing training performed different tactical responses to emergency alarms in real time while

colleagues played the roles of inmates and other correctional officers. Respondent Salcedo was lying on the ground in the prone position while a trainee handcuffed him. During the process, the trainee hyperextended respondent Salcedo's right arm and shoulder.

4. Respondent Salcedo felt "excruciating pain" in his right arm and shoulder, and he "immediately tapped out" by giving the trainee a physical sign that he was injured so the trainee would know to pause the training exercise. Respondent Salcedo reported his injury to the person overseeing the training, left the training to change into his civilian clothes, and his wife, also a correctional officer, drove him home.

5. Respondent Salcedo did not immediately seek medical treatment for his right arm or shoulder. Instead, he self-treated by taking over-the-counter ibuprofen and alternating between applying hot and cold compresses. He continued to work through the pain.

6. As time elapsed and respondent Salcedo's pain in his right arm and shoulder continued, he became increasingly concerned that his injuries would impair his ability to properly respond to emergency alarms, defend himself and others against physical attack, and physically overcome and restrain unruly inmates. He understood his responsibility to those he supervised and other colleagues, took the responsibility seriously, and did not want to "become a liability" for them.

SERVICE RETIREMENT

7. Respondent Salcedo signed an application for service retirement and submitted it to CalPERS on October 10, 2011. He identified his last day on payroll as December 29, 2011, and he requested that his service retirement become effective the

following day. CalPERS approved his application, and he has been receiving service retirement benefits since December 30, 2011.

INITIAL MEDICAL TREATMENT

8. Respondent Salcedo first sought medical treatment for the injuries to his right arm and shoulder after filing a workers' compensation insurance claim in 2012. He eventually underwent two surgeries on his right shoulder and one on his left.

Disability Retirement Election Application

9. While respondent Salcedo was receiving medical treatment, a former colleague told him they thought he was eligible for an industrial disability retirement. On August 7, 2023, he signed a Disability Retirement Election Application (Application) seeking an industrial disability retirement and submitted it to CalPERS.

10. Respondent Salcedo identified on the Application his specific disabilities as: (1) high blood pressure; (2) thickening of the left ventricle wall; (3) right shoulder impingement syndrome and acromioclavicular (A/C) joint cartilage disorder; (4) excess fluid around the left shoulder glenohumeral joint; (5) posttraumatic stress disorder (PTSD); and (6) hearing loss. He represented that his disabilities occurred on December 29, 2011. However, he also stated that the disabilities were "a result of cumulative trauma over the course of my career with the [Department]." Additionally, he explained that he injured his left arm while awaiting treatment for his right.

11. Respondent Salcedo also explained that his disabilities require him to "avoid stressful/hostile environments, excessive physical exertion, heavy lifting, pushing or pulling[,] and any other excessive labor[-]intensive work." He concluded

that he is "no longer able to perform the usual and customary duties of [his] job as a [correctional lieutenant]."

12. Lastly, respondent Salcedo explained that he was already disabled, except in the left shoulder, when he applied for a service retirement. He did not learn that he could apply for an industrial disability retirement until years later when a former colleague told him and he confirmed the information with an attorney. He completed the Application shortly thereafter.

CalPERS's Evaluation of Respondent Salcedo's Application

13. CalPERS reviewed respondent Salcedo's Application and determined there was sufficient medical evidence to refer his cardiological (high blood pressure and thickening of the left ventricle wall) and orthopedic (bilateral shoulders) conditions for independent medical evaluation (IME). It referred him to James M. Schmitz, M.D., for an IME of the former condition and Pavel Moldavskiy, M.D., for an IME of the latter.

14. CalPERS also determined that there was insufficient medical evidence to: (1) refer respondent Salcedo's psychological (PTSD) or otolaryngological (hearing loss) condition for IME; or (2) determine if he qualified for an industrial disability retirement due to either condition. Therefore, it canceled his application as to both conditions.

15. Drs. Schmitz and Moldavskiy performed their IMEs, and both concluded that the condition they evaluated is not disabling. They documented their findings and conclusions in a written report and sent the report to CalPERS. After reviewing the IME reports and medical records respondent Salcedo provided, CalPERS concluded that he was not substantially incapacitated from performing his usual job duties as a correctional lieutenant for the Department due to a cardiological or orthopedic

condition when he signed the Application. Therefore, CalPERS denied the Application based on both conditions.

16. CalPERS sent respondent Salcedo notice of its denial on March 28, 2024. He timely appealed the denial. On January 5, 2026, Sharon Hobbs, Chief of CalPERS's Disability and Survivor Benefits Division, signed a Statement of Issues solely in her official capacity. The Statement of Issues alleges that the sole issue on appeal is whether respondent Salcedo was substantially incapacitated from the performance of his usual duties as a correctional lieutenant for the Department due to a cardiological or orthopedic condition when he signed the Application.

Physical Requirements of Position/Occupational Title

17. The Department's return to work coordinator completed a Physical Requirements of Position/Occupational Title for respondent Salcedo's former position as a correctional lieutenant. She itemized the physical requirements of the position and indicated the frequency with which respondent Salcedo was required to perform them during a typical shift as follows:

> Constantly (over 6 hours): Sitting; standing; walking; squatting; bending and twisting (neck); bending and twisting (waist); reaching (above and below shoulder); pushing and pulling; fine manipulation; simple grasping repetitive use of hands; computer use (keyboard, mouse); lifting/carrying up to 50 pounds; walking on uneven ground; driving; exposure to excessive noise; exposure to extreme temperature, humidity, or wetness; working at

heights; and operation of foot controls or repetitive movement.

Frequently (3 to 6 hours): Climbing and exposure to dust, gas, fumes, or chemicals.

Occasionally (up to 3 hours): Running; crawling; kneeling; power grasping; lifting/carrying 51 pounds or more; use of special visual or auditory protective equipment; and working with biohazards (e.g., blood-borne pathogens, sewage, hospital waste, etc.).

Never: Working with heavy equipment.

Essential Functions of Position

18. Avenal State Prison created a document itemizing the essential functions of a correctional lieutenant. As a correctional lieutenant, respondent Salcedo was "under general supervision of the Facility Captain." He served "as [a] second line supervisor and coordinate[d] the work of the Sergeant and [was] responsible for the processing of inmate admissions and departures."

19. Respondent Salcedo had to be physically and mentally able to perform a multitude of tasks. For example, he had to be capable of working in all the Department's correctional facilities and performing the duties of all positions within the facilities. He also had to be able to disarm, subdue, and restrain inmates and defend himself and others against armed attacks. Respondent Salcedo had to have the mental ability to always be aware and alert; assess emergency situations, determine

the appropriate response, and carry out the response; and accurately recall and describe, verbally and in writing, different incidents.

Competent Medical Evidence

DR. SCHMITZ

20. Dr. Schmitz obtained his Bachelor of Science in biology from Marquette University in 1975. Five years later, he received his Doctor of Medicine from The University of Wisconsin School of Medicine. In 2014, he earned a Master of Science in leadership and strategy from the London Business School.

21. Dr. Schmitz completed an internship and residency in internal medicine at the University of Texas Health Science Center at Dallas, Parkland Memorial Hospital. He completed a research fellowship in cardiology at the University of Texas, Southwestern Medical School, followed by a fellowship in cardiology at the same institution. He completed a preceptorship in peripheral vascular intervention at the Wichita Heart Institute.

22. Dr. Schmitz is board certified in internal medicine with a subspecialty in cardiovascular disease. He has held various academic appointments at numerous medical schools and several professional appointments at different medical facilities. He has been licensed to practice medicine in Louisiana, New Hampshire, Texas, and California.

23. At CalPERS's request, Dr. Schmitz performed an IME of respondent Salcedo's cardiological condition on March 5, 2024. He documented his findings and conclusions in a written report, which was admitted into evidence. He testified at hearing.

24. Prior to meeting respondent Salcedo, Dr. Schmitz familiarized himself with the physical requirements and essential functions for respondent Salcedo's position as a correctional lieutenant discussed above. He reviewed medical records CalPERS provided and found nothing of significance.

25. During the IME, respondent Salcedo described his current complaint as "heart." He described a prior medical history of hypertension, PTSD, obstructive sleep apnea, gout, and bilateral shoulder surgery. His medication regimen consisted of losartan (hypertension), allopurinol (gout), omeprazole (acid reflux), and methocarbamol (back pain).

26. Dr. Schmitz's physical examination of respondent Salcedo was within normal limits, although his blood pressure reading was 160/100 (hypertensive) in the left arm while in a sitting position. Dr. Schmitz reviewed an echocardiogram that was performed in December 2023. It showed normal left ventricular systolic function and mild diastolic dysfunction. The left atrium was minimally dilated, but there was no calculation of left atrial volume index. There was mild aortic sclerosis with no significant stenosis and minimal dilation of the ascending aorta.

27. Based on his IME, Dr. Schmitz concluded that respondent Salcedo did not have a cardiological condition that substantially incapacitated him from performing the usual duties of a correctional lieutenant with the Department. He explained:

> [Respondent Salcedo] has high blood pressure which appears to be controlled with a single anti-hypertensive system agent. He has minimal left ventricular hypertrophy. As such, he does not have any hypertension impairment that would rise to the level of incapacity from performing

> the job of a correctional officer. Of note, I have reviewed the job description and am intimately familiar with the requirements of a correctional officer.

28. Dr. Schmitz further explained that respondent Salcedo had no symptoms related to his cardiovascular system, specifically identifying a 2012 stress test and a recent echocardiogram as "two pieces of objective information" that support his conclusion. He described both procedures as "normal" and said: "I do not consider the applicant to have any objective information that would render him incapacitated."

29. Dr. Schmitz testified consistently with his IME report. He also explained that his final diagnosis for respondent Salcedo was that he has "hypertension," and his blood pressure reading at the IME was consistent with such diagnosis. However, Dr. Schmitz explained that current guidelines for treating hypertension recommend against starting, stopping, or changing treatment based solely on a single blood pressure reading taken in a medical environment because of the temporary anxiety and stress patients commonly experience in such setting.

30. Lastly, Dr. Schmitz reiterated his opinion that respondent Salcedo is not substantially incapacitated from performing the usual duties of a correctional lieutenant with the Department due to a cardiological condition. Although Dr. Schmitz confirmed that respondent Salcedo suffers from hypertension, he opined that respondent Salcedo's hypertension is "exceptionally well controlled on a single agent." Dr. Schmitz based his opinion on: (1) the recorded history of blood pressure readings in a medical office, rather than the single reading during the IME; and (2) the recorded history of treatment by well-qualified physicians who would have adjusted respondent Salcedo's medication if his hypertension was uncontrolled.

DR. MOLDAVSKIY

31. Dr. Moldavskiy earned his Bachelor of Science in biology from the University of California, Los Angeles, in 2008. Four years later, he received his Doctor of Medicine from the University of Southern California, Keck School of Medicine. He completed a one-year internship followed by a four-year residency in orthopedic surgery at the former Los Angeles County+USC Medical Center (now Los Angeles Medical Center).

32. Dr. Moldavskiy is a board-certified orthopedic surgeon with a subspecialty in hand surgery. He currently practices orthopedic surgery in Bakersfield, California, and is affiliated with Adventist Bakersfield Hospital, Mercy Hospital, and Methodist Hospital.

33. At CalPERS's request, Dr. Moldavskiy performed an IME of respondent Salcedo's orthopedic condition on October 13, 2024. He documented his findings and conclusions in a written report in which was admitted into evidence. He testified at hearing.

34. Prior to the IME, Dr. Moldavskiy reviewed the physical requirements and essential functions for respondent Salcedo's position as a correctional lieutenant discussed above. He also reviewed medical records CalPERS provided and found nothing of significance.

35. During the IME, respondent Salcedo described his current complaint as bilateral shoulder pain. He described a prior medical history of hypertension, sleep apnea, low back pain, PTSD, and bilateral shoulder surgery. Dr. Moldavskiy's examination of respondent Salcedo's shoulders revealed no obvious deformities or

misalignment, and prior surgical incisions were well-healed. Respondent Salcedo complained of widespread tenderness upon palpation of both shoulders.

36. Testing of range of motion of the shoulders showed a reduction upon forward flexion, extension, and internal and external rotation, bilaterally. Testing of shoulder strength was normal, bilaterally. However, testing of grip strength showed weakness in two muscle groups on the left and one on the right. Measurements of the arm and forearm were equal, bilaterally, and showed no signs of muscle atrophy.

37. Based on his IME, Dr. Moldavskiy concluded that respondent Salcedo "does not have an actual and present [orthopedic] bilateral shoulder impairment that rises to the level of substantial incapacity to perform his usual duties." He explained:

> The examinee is not substantially incapacitated as he has reasonable range of motion on physical exam, although he has pain in his shoulders.
>
> The examinee does not meet the criteria of substantial incapacity. More specifically, the medical qualifications for disability retirement, as concluded by the courts, require that the examinee [have] substantial inability to perform his usual and customary job duties of the position. Difficulty in performing certain tasks alone is not enough to support findings of disability. It is the inability to perform the essential functions of the actual and present job duties that determines whether the examinee is substantially incapacitated for the performance of the job duties.

> In this case, I believe that some tasks would be difficult to perform, however, it does not rise to the level of inability to perform and thus, the examinee is not substantially incapacitated.

38. Dr. Moldavskiy explained that one finding during physical examination that he could not explain was respondent Salcedo's "grip strength was abnormally weak, which is not a typical finding in someone who has shoulder issues and no documented forearm or hand issues." He opined that there was "no medical basis" for such weakness.

39. Dr. Moldavskiy testified consistently with his IME report. Additionally, he explained that his overall diagnosis for respondent Salcedo was bilateral shoulder impingement syndrome with arthritis. He characterized the decreased range of motion in respondent Salcedo's shoulders as "mild-to-moderate" and agreed he has some impairment. In addition to the decreased range of motion, prior imaging showed wear and tear of the soft tissue, bilaterally.

40. Dr. Moldavskiy opined that respondent Salcedo's reduced range of motion will make performing certain job duties more difficult, but it will not prevent him from performing any. Dr. Moldavskiy reiterated that there is no orthopedic connection between respondent's bilateral shoulder impingement and weak grip. Dr. Moldavskiy confirmed his conclusion that respondent Salcedo is not substantially incapacitated from performing the usual duties of a correctional lieutenant with the Department due to an orthopedic condition.

PHYSICIAN'S REPORT ON DISABILITY

41. Respondent Salcedo produced a Physician's Report on Disability completed by Peter Simonian, M.D., and one completed by Marshall Lewis, M.D., at hearing. Neither physician testified. Dr. Simonian indicated that he treated respondent Salcedo from December 24, 2021, through February 9, 2024. During that time, respondent Salcedo's chief complaints were "pain, weakness, numbness, tingling, tightness." His subjective symptoms were "interference with daily activity."

42. Dr. Simonian diagnosed respondent Salcedo with "RT shoulder symptomatic AC arthritis with superior labral tear and impingement." The diagnosis was based on Dr. Simonian's objective examination finding that "patient required a surgery" and a September 9, 2021 magnetic resonance imaging (MRI). Dr. Simonian concluded his diagnosis rendered respondent Salcedo temporarily totally disabled and unable to perform any type of work.

43. Dr. Simonian also diagnosed respondent Salcedo with "LT shoulder symptomatic AC arthritis, impingement, partial thickness rotator cuff tear, labral tear, and synovitis." He based his diagnosis on his objective examination finding that "patient required a surgery" and a March 16, 2021 MRI. Dr. Simonian concluded his diagnosis rendered respondent Salcedo temporarily totally disabled and unable to perform any type of work.

44. Dr. Simonian concluded that, respondent Salcedo was substantially incapacitated from performing the usual duties of a correctional lieutenant with the Department as of December 29, 2011. He further concluded that such incapacity is not permanent but will last longer than 12 months. He did not identify any specific job duties that the disability prevents respondent Salcedo from performing. Instead,

Dr. Simonian wrote that respondent Salcedo is temporarily totally disabled and cannot perform any type of work.

45. Dr. Lewis treated respondent Salcedo from November 6, 2013, through March 13, 2014. During that time, respondent Salcedo's chief complaint was pain in his right shoulder. His subjective symptoms were "outward movement causes sharp pain, patient has numbness in [right arm]."

46. Dr. Lewis diagnosed respondent Salcedo with right shoulder impingement syndrome and a right A/C cartilage disorder. His diagnoses were not based on any objective examination findings but he relied on a February 12, 2013 MRI and X-ray of respondent Salcedo's right shoulder. Dr. Lewis determined that respondent Salcedo's disability does not restrict or limit him in any manner.

47. Dr. Lewis concluded that respondent Salcedo's disability rendered him substantially incapacitated from performing the usual duties of a correctional lieutenant with the Department as of November 6, 2013. He further concluded that such incapacity is permanent. He did not identify any specific job duties that the disability prevents respondent Salcedo from performing, noting instead that he is retired.

ADDITIONAL MEDICAL RECORDS

48. Respondent Salcedo produced numerous additional medical records. However, none documented a physician's determination that on August 7, 2023, respondent Salcedo has a physical disability that renders him substantially incapacitated from the performance of the usual job duties of a correctional lieutenant with the Department.

Respondent Salcedo's Testimony

49. Respondent Salcedo explained that his position as a correctional lieutenant was not "solely administrative." He regularly responded to emergency alarms, took command of the situation, and directed other correctional officers' actions. When the incident was serious enough, he physically intervened and helped restrain inmates. Additionally, his personal policy was to never ask a subordinate to do something he would or could not do himself.

50. Respondent Salcedo further explained that no physician ever "medically removed" him from working. Instead, he decided to service retire due to his concerns with being able to perform the physical duties of his position and not wanting to become a liability for his colleagues.

51. Lastly, respondent Salcedo stated that the issue is whether he can "safely and reliably perform" his former duties, and he believes that his "existing limitations" prevent him from doing so. He is not incapable of performing all physical work; indeed, he works part time at Home Depot. However, there, unlike in a prison, he can control his physical activities by stopping what he is doing, resting, shifting his body, and asking for help.

Analysis

52. Respondent Salcedo has the burden of producing competent medical evidence that he had a physical disability that rendered him substantially incapacitated from performing the usual duties of a correctional lieutenant with the Department when he signed the Application. Although he produced Drs. Simonian's and Lewis's respective Physician's Report on Disability, he produced no evidence that either physician's opinion is supported by a written report documenting the physician's

findings and conclusions during physical examination. Neither physician testified at hearing nor otherwise explained his opinion.

53. Dr. Simonian's opinion that respondent Salcedo was substantially incapacitated is based on imaging studies of both shoulders that were taken more than nine years after his incapacity began. It is also based on Dr. Simonian's physical examination nine years or more after the beginning of his incapacity. He did not identify any specific duties respondent Salcedo cannot perform.

54. Dr. Lewis based his opinion that respondent Salcedo is substantially incapacitated on the latter's subjective complaints, no objective findings during examination, and imaging studies that were taken the month after his incapacity began. Dr. Lewis concluded respondent's Salcedo's disability does not restrict or limit him in any manner, and he did not identify any job duties the latter cannot perform.

55. On the other hand, Drs. Schmitz's and Moldavskiy's opinions that respondent Salcedo is not substantially incapacitated were supported by findings and conclusions each made while physically examining him. They documented their respective findings and conclusions in a written report, the report was introduced into evidence, and both testified at hearing. Both persuasively explained their respective opinions.

56. CalPERS's medical evidence was more persuasive than respondent Salcedo's. Therefore, the competent medical opinions established respondent Salcedo is not substantially incapacitated from the performance of the usual duties of a correctional lieutenant with the Department due to a cardiological or orthopedic condition. Therefore, respondent Salcedo did not meet his burden of establishing his eligibility for an industrial disability retirement.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Respondent Salcedo has the burden of proving he qualifies for industrial disability retirement by a preponderance of the evidence. (*McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051–1052, fn. 5 [applicant for service-connected disability retirement has the burden of proving his eligibility for such retirement by a preponderance of the evidence].) This evidentiary standard requires respondent Salcedo to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, he must prove it is more likely than not that he was substantially incapacitated for the performance of the usual duties of a correctional lieutenant with the Department when he applied for industrial disability retirement. (*Lillian F. v. Super. Ct.* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

2. "Any . . . state safety . . . member 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. (Gov. Code, § 21151, subd. (a).) The member must be immediately retired for disability "if the medical examination and other available information show to the satisfaction of the board . . . that the member . . . is incapacitated physically or mentally for the performance of his . . . duties and is eligible to retire for disability." (Gov. Code, § 21156, subd. (a)(1).) Eligibility for disability retirement shall be made "on the basis of competent medical opinion." (*Id.* at subd. (a)(2).)

3. "Incapacity for performance of duty" refers to a "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." (Gov. Code, § 20026.) An appellate court interpreted the phrase "incapacitated for the performance of duty" as meaning "the [s]ubstantial inability of the applicant to perform his usual duties." (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876 [interpreting former Gov. Code, § 21022, which was repealed by Stats.1995, c. 379 (S.B. 541), § 1 and reenacted as Gov. Code, § 21151, subd. (a), by Stats.1995, c. 379 (S.B. 541), § 2].)

4. Pain or discomfort, which merely makes it more difficult for one to perform his duties, does not constitute a substantial incapacity. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207.) Neither do prophylactic restrictions or the risk or fear of further injury. (*Hosford v. Board of Administration of the Public Employees' Retirement System* (1978) 77 Cal.App.3d 854, 863-865.) Such restrictions, risk, or fear do "little more than demonstrate that [a] claimed disability is only prospective (and speculative), not presently in existence." (*Id.* at p. 863.)

Conclusion

5. The competent medical opinions established that respondent Salcedo was not substantially incapacitated from performing the usual duties of a correctional lieutenant with the Department due to a cardiological or orthopedic condition when he signed the Application. Therefore, he is ineligible for an industrial disability retirement, and his Application must be denied.

ORDER

Respondent Jess A. Salcedo's August 7, 2023 Disability Retirement Election Application seeking an industrial disability retirement is DENIED.

DATE: September 17, 2026

Coren D. Wong (Sep 17, 2026 08:44:53 PDT)

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings