

ATTACHMENT A

THE PROPOSED DECISION

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

In the Matter of the Application for Industrial Disability

Retirement of:

SUSAN GARCIA AYARD,

and

**CALIFORNIA MEN'S COLONY, CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION,**

Respondents.

Agency Case No. 2022-0729

OAH No. 2023060482

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, Office of Administrative Hearings, State of California, heard this matter on March 28, 2024, by videoconference.

Staff Attorney Mehron Assadi represented the California Public Employees' Retirement System (CalPERS).

There was no appearance by or on behalf of either respondent Susana Garcia Ayard or the California Men's Colony, California Department of Corrections and Rehabilitation. Both respondents were determined to be in default pursuant to Government Code section 11520.

Complainant opted to present evidence in support of its denial of respondent Ayard's application.

The record was closed and the matter was submitted for decision on March 28, 2024.

FACTUAL FINDINGS

1. Respondent Susana Garcia Ayard (respondent) was employed as a correctional sergeant at the California Men's Colony, California Department of Corrections and Rehabilitation. By virtue of this employment, respondent was a state safety member of CalPERS subject to Government Code section 21151.

2. On December 28, 2021, respondent submitted an application for an industrial disability retirement. Respondent described her disability as two herniated discs in her neck, which required surgical intervention. On June 6, 2022, respondent was evaluated by board-certified orthopedic surgeon Don T. Williams, M.D., at the request of CalPERS. Dr. Williams interviewed respondent, reviewed her medical records, reviewed the duties and essential functions of her position, and performed an orthopedic examination. Dr. Williams concluded that respondent is not substantially incapacitated from performing her usual duties as a correctional officer.

3. On June 29, 2022, CalPERS sent a determination letter to respondent, explaining that based on respondent's medical evidence, a determination had been made that respondent is not substantially incapacitated from performance of her duties as a correctional sergeant due to her neck condition.

4. Respondent submitted an appeal of the denial dated July 25, 2022.

5. Dr. Williams testified at the hearing about his examination of respondent and his findings. Respondent injured her neck in 2017 in a motor vehicle accident on the job. A CT scan at the time showed no fracture. A subsequent MRI showed a "tiny" 1-millimeter change in her neck at the C5-C6 level. Dr. Williams opined that respondent should have been able to return to work within one to two months after this accident. Respondent received conservative treatment for her injury. She was then involved in an off-duty motor vehicle accident and reported worsening symptoms. Respondent had a cervical disc replacement surgery in May 2020.

At the time Dr. Williams examined respondent in 2022, she complained of some slight neck pain and spasms, but demonstrated almost full range of motion of the neck, normal reflexes, stable cervical discs, and good grip strength. Dr. Williams concluded that respondent had returned to baseline functioning and that no work preclusions were warranted. Dr. Williams's testimony and expert report are persuasive and unrebutted.

6. Respondent currently resides in Texas. Respondent did not appear at the hearing, which was held by videoconference, and presented no evidence in support of her application.

LEGAL CONCLUSIONS

1. Pursuant to Government Code section 21151, subdivision (a), a state safety member who becomes incapacitated from the performance of his or her usual duties as the result of an industrial disability shall be retired for disability. The burden of proving disability is on the employee to establish, by competent medical evidence, that he or she is incapacitated. (*Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 691.)

2. As set forth in Finding 6, respondent did not appear at hearing and did not present competent medical evidence in support of the application. As set forth in Finding 5, the conclusion of Dr. Williams that respondent is not substantially incapacitated from performing the duties of a correctional sergeant is persuasive. Accordingly, respondent has not met her burden of establishing that she is entitled to an industrial disability retirement.

ORDER

The application of Susana Garcia Ayard for industrial disability retirement is denied.

DATE: 04/04/2024

Karen Reichmann

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings