

**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:**

**JUAN A. GONZALEZ, and**

**CALIPATRIA STATE PRISON, CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION,**

**Respondents**

**Agency Case No. 2023-0668**

**OAH No. 2024020622**

**PROPOSED DECISION**

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 4, 2024, by videoconference.

Bryan Delgado, Attorney, represented the California Public Employees' Retirement System (CalPERS).

Juan Gonzalez, respondent, did not appear. A Notice of Hearing was properly served on him. As a result, this matter proceeded as a default against respondent under Government Code section 11520, subdivision (a).

No appearance was also made on behalf of Calipatria State Prison, California Department of Corrections and Rehabilitation (CDCR). A Notice of Hearing was properly served on CDCR. This matter proceeded as a default against CDCR under Government Code section 11520, subdivision (a).

Complainant's request for a prove-up hearing pursuant to Government Code section 11520 was granted. After evidence was received and admitted, the record was closed, and the matter was submitted for decision on September 4, 2024.

## **ISSUE**

The issue to be decided is whether respondent<sup>1</sup> was substantially incapacitated from the performance of his usual and customary duties at the time he applied for Industrial Disability Retirement (IDR).

## **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

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<sup>1</sup> Hereafter, "respondent" is in reference to Mr. Gonzalez.

by CDCR as a registered nurse at Calipatria State Prison. By virtue of his employment, respondent is a state industrial member of CalPERS subject to Government Code sections 20048, 21150, and 21151.

2. On September 27, 2022, respondent signed and filed an application for service retirement pending IDR. In the application, respondent claimed disability due to "traumatic brain injury due to acoustic shockwave or blast" and "severe debilitating tinnitus, asthma, major depression, gastrol [sic] intestinal problems." In his application, he cites May 3, 2019, as the date the disability occurred.

3. Respondent informed CalPERS on June 20, 2023, he did not wish to pursue disability retirement based on the internal (asthma and gastrointestinal conditions) and neurological (brain) conditions. Thus, he seeks disability retirement based on severe debilitating tinnitus and psychological problems.

4. In a letter dated June 22, 2023, CalPERS denied respondent's application for IDR. CalPERS states in this letter that it is denying his IDR application based on its review of the reports of physicians, Matthew F. Carroll, M.D., a board-certified psychiatrist, and Geoffrey A. Smith, M.D., who is board-certified in otolaryngology surgery. CalPERS retained both physicians to examine respondent and prepare reports to conduct independent medical evaluations (IMEs) to determine whether he has a medical and/or psychiatric condition that rises to the level of a substantially incapacity to perform his usual job duties.

5. Respondent timely appealed CalPERS's denial.

6. On February 8, 2024, Sharon Hobbs, in her official capacity as Chief of CalPERS's Disability and Survivor Benefits Division, signed and filed a Statement of Issues for purposes of the appeal. The matter was set for hearing, pursuant to

Government Code section 11500 et seq. On February 26, 2024, complainant served respondent with notice of the time, place and manner of the hearing at the address he identified in his appeal. As noted, respondent did not appear and was found to be in default pursuant to Government Code section 11520, subdivision (a).

## **Duties of a Registered Nurse**

7. According to the job description for a registered nurse for California Correctional Health Care Services submitted as evidence, a registered nurse is expected to be able to perform a wide range of administrative functions.

These administrative duties include the ability to work both voluntary and mandatory overtime, function professionally under high stressful circumstances; inspect and secure clinical areas and medical materials, and observe and report contraband such as weapons or illegal drugs; observe and report conduct of inmates to prevent self-injurious behavior by inmates or behavior by inmates which has or is likely to lead to the injury to other inmates or staff members when at the institution; work under pressure and under tight deadlines; solve problems; reason and make sound clinical judgments in client assessment, diagnostic planning, and therapeutic planning; comprehend, retain, integrate, synthesize, and apply information to meet departmental demands; follow verbal and written instructions; manage use of time effectively and prioritize actions to complete professional and technical tasks within expected time constraints; exercise professional judgment and ethical behavior at all times; possess reading and writing skills sufficient to meet departmental demands; identify and communicate limits of one's knowledge and skills to others when appropriate; and multitask and deal with changing priorities.

8. As a matter of the physical demands of a registered nurse for the California Correctional Health Care Services, as identified in the job description, a registered nurse is expected to maintain sufficient strength, agility, and endurance in order to respond during stressful or emergency (physical, mental, and emotional) situations without compromising health and well-being of self or others; have the mental capacity to recall incidents in order to accurately document them in writing; maintain and ensure confidentiality of all information, records, documents, concerns, and issues; remain conscious and focused to effectively evaluate and respond to dangers or emergencies to maintain a safe and secure environment for self and others and anticipate problems (e.g., harm to self or others, escapes, and change in inmate's mental functioning); lift and carry occasionally to frequently (up to 20 pounds maximum) to medium (up to 50 pounds maximum); push, pull and grip occasionally to frequently; stoop bend, kneel, reach, squat, climb, twist, and stretch occasionally to frequently to sufficiently inspect, observe, manipulate and move objects 360 degrees horizontally from the floor through overhead levels; walk occasionally to continuously on a wide range of surfaces for varying distances, indoors or outdoors in various weather conditions which may become slippery due to weather or spillage due to weather or spillage of liquids which may be uneven or rough; properly wear all types of personal protective equipment or clothing including safety vests eye protection, footwear, ear plugs, gloves and respirators, masks or breathing apparatuses to prevent injury or exposure to blood and/or airborne pathogens; work indoors or outside in direct sunlight while wearing full protective gear; observe and react to hazards, warning, alarms, sirens, flashing lights, voice commands, and hand signals; withstand periodic exposure to chemical agents including cleaning agents and solvents and excessive noise; use fingers and hands steadily, occasionally to frequently; use and operate common office machines/equipment and similar equipment to complete

assigned duties; attend and participate in various training courses to comply with departmental policies, procedures or supervisory directives as needed or required; manipulate client-utilized equipment in a safe manner; work under a variety of adverse weather conditions such as extreme hot, cold, rain, wind, and dust and possibly for extended periods; perform required tasks in various lighting conditions including dim or bright light; and tolerate exposure to extremely loud or chaotic environments.

### **Dr. Smith's IME**

9. CalPERS, as noted, retained Dr. Smith, a board-certified otolaryngologist, to conduct an IME to determine whether respondent qualifies for disability retirement based on tinnitus. Dr. Smith examined respondent and administered an audiometric evaluation to assess respondent's hearing. As part of his examination, he also conducted a physical examination of respondent and reviewed medical records from November 6, 2020, through February 22, 2023. In addition, Dr. Smith reviewed the administrative and physical duties of a registered nurse working for the California Correctional Health Care Services.

10. Dr. Smith concludes, as he writes in his report, that respondent has mild, high frequency, neurosensory loss of hearing based on the audiometric study he administered. He finds further that respondent's tinnitus is a subjective complaint that causes him difficulties in concentrating or in his ability to write. He also finds there are no objective findings that impacted respondent's activities of daily living due to his "mild, high frequency, hearing loss with the ringing in the ears."

11. Dr. Smith additionally concludes there are no job duties respondent is unable to perform due to a medical or mental condition from an otolaryngological perspective, and respondent is not presently incapacitated from the performance of

the usual or customary duties of a registered nurse working at CDCR based on his mild hearing loss.

12. As a matter of his medical recommendation, Dr. Smith states: "It appears that the psychiatric/psychological that he has is etiology rather than an otologic problem, which is causing him difficulties at this juncture."

### **Dr. Carroll's IME**

13. CalPERS retained Dr. Carroll, a board-certified psychiatrist, to determine whether respondent qualifies for disability retirement based on psychological factors. Dr. Carroll performed a psychiatric evaluation of respondent to determine whether he has a psychiatric condition that arises to the level of substantial incapacity to perform his duties as a registered nurse at CDCR. Dr. Carroll interviewed respondent, administered the Minnesota Multiphasic Personality Inventory (MMPI) psychological assessment test, and reviewed 259 pages of respondent's medical records.

14. Dr. Carroll concludes, as he writes in his report, that respondent does not have a psychiatric condition that arises to the level of substantial incapacity to perform his duties as a registered nurse at CDCR. He bases this conclusion on the fact that the evidence did not show respondent suffered "traumatic brain injury by acoustic shockwave or blast," as respondent stated in his IDR application. Based on his review of the medical records and interview with respondent, Dr. Carroll states that there is no objective evidence that an acoustic shockwave or blast had occurred. He adds that respondent told him there was "jackhammering going on" at the jail where he was working. Dr. Carroll states further in his report that respondent does not have Post Traumatic Stress Disorder due to jackhammering. There is no evidence, he writes, that construction work would have brought up memories "that were now causing him



traumatic stress disorder." He states further that the results of the psychological testing suggested that respondent was exaggerating his condition.<sup>2</sup> He additionally notes that respondent was able to perform telework prior to retiring, and there is no evidence that he was unable to continue working.

## LEGAL CONCLUSIONS

1. By virtue of his prior employment, respondent is a state industrial member of CalPERS subject to Government Code sections 20048, 20382, 21150, and 21151. To qualify for IDR, respondent must prove that, at the time he applied, he was "incapacitated physically or mentally for the performance of [her] duties....." (Gov. Code, § 22156, subd. (a)(1).) As defined in Government Code section 20026, "disability" and "incapacity for performance of duty" as a basis of retirement, means 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. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051 fn. 5.) The burden of proof is by a preponderance of the evidence. (*Glover v. Bd. of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

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<sup>2</sup> It appears Dr. Carroll is referring to psychological testing he reviewed in medical records and not the results of the MMPI he administered because he found the results of the MMPI "invalid."


## Determination

3. Respondent did not prove by competent medical evidence that he was substantially incapacitated from performing his usual and customary duties as a registered nurse at CDCR when he applied for IDR. Respondent did not appear at the hearing and did not produce any evidence to meet his burden. The evidence CalPERS submitted, namely, Dr. Smith's and Dr. Carroll's IME reports, shows that respondent was not substantially incapacitated from performing his usual and customary duties as a registered nurse at CDCR at the time of his IDR application. Both physicians based their opinions on their examinations of respondent and a review of respondent's medical records. They both found that respondent was not substantially incapacitated from performing his usual and customary duties as a registered nurse at CDCR at the time he filed his application for IDR. Accordingly, respondent is not entitled to IDR, pursuant to Government Code section 21156, subdivision (a)(1).

## ORDER

The appeal of respondent Juan A. Gonzalez is denied.

DATE: September 25, 2024

  
Abraham M. Levy (Sep 25, 2024 13:27 PDT)

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings