

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 Disability Retirement of:

DEON E. RUFFIN,

Respondent,

and

**PAROLES AND COMMUNITY SERVICES DIVISION,
CALIFORNIA DEPARTMENT OF CORRECTIONS AND
REHABILITATION,**

Respondent.

Agency Case No. 2023-0912

OAH No. 2024020775

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on November 20, 2024, by videoconference.

Bryan Delgado, attorney, California Public Employees' Retirement System (CalPERS), represented Complainant CalPERS. Respondent Deon E. Ruffin (Respondent) appeared and represented himself. There was no appearance by the other respondent, Paroles and Community Services Division, California Department of Corrections and Rehabilitation (Department).

Oral and documentary evidence was received. The record was held open until November 22, 2024, so Respondent could upload a document to Case Center, the electronic evidence platform.

Case Center indicates that on November 20, 2024, Respondent uploaded two documents that became items 9 and 10 in section B of the evidence bundle, each identified as "Adobe Scan Nov 18, 2024." It appears the two documents are the same, being progress notes by Dr. Peter C. Nalos.

On November 22, 2024, Complainant's counsel wrote the ALJ, stating that as of the date of the letter, Respondent had submitted to Case Center "'0011: IMG_1535[.]'" Complainant objected to that submission on the grounds of relevance and hearsay.

On December 19, 2024, the ALJ issued an order reopening the record because the document referred to by Complainant's counsel did not appear in the evidence bundle, and the ALJ desired clarification from Complainant. The record was reopened until January 6, 2025.

On January 6, 2025, counsel submitted a letter response, identifying the exhibit by a reference to the index in Case Center. Counsel also reiterated his objection to the document.

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A copy of that document was moved into section B of the evidence bundle and is hereby identified as Exhibit R-11. The objection is sustained. Respondent's other exhibits, which had been referenced by their item number, have been re-labelled.

The case was again submitted for decision, on January 6, 2025.

The ALJ determined that Exhibits 8 and 11, which contain Respondent's medical information should be sealed, and a separate protective order will be issued.

The ALJ hereby makes his factual findings, legal conclusions, and order.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Sharon Hobbs, Chief, Disability and Survivor Benefits Division, CalPERS, executed the Statement of Issues (SOI) in this matter while acting in her official capacity. CalPERS was also acting in its official capacity in filing and maintaining the SOI.

2. Respondent Ruffin was employed by respondent Department. When he filed his application for industrial disability retirement, Respondent was then employed by the Department as a Parole Agent I. By virtue of his employment, Respondent is a state safety member of CalPERS subject to Government Code section 21151. (All further statutory citations are to the Government Code.)

3. On September 26, 2022, Respondent signed an application for industrial disability retirement. In filing the application and subsequent materials, disability was claimed on the basis of a cardiac condition, hypertension including chest pains, and

psychological conditions, including Post Traumatic Stress Disorder (PTSD), anxiety, and depression.

4. CalPERS reviewed medical evidence, including reports from two doctors who each conducted an Independent Medical Exam (IME) of Respondent. On August 4, 2023, CalPERS wrote Respondent and informed him that it had determined that he was not substantially incapacitated from the performance of his job duties, and that his application for disability retirement was denied. The denial letter notified Respondent of his appeal rights.

5. Respondent asserted his appeal rights, and this proceeding ensued. The issue on appeal is limited to a determination of whether, at the time of the disability application, Respondent was substantially incapacitated from performance of his usual and customary duties based on hypertension or psychological conditions, PTSD, anxiety, or depression.

Respondent's Usual Job Duties as a Parole Agent I

6. According to Exhibit 12, a Job Analysis for a Parole Agent I (PAI), Respondent may have numerous duties; the Job Analysis notes a PAI may perform some or all of 22 enumerated tasks. Among the standard tasks is to work independently to assist parolees in successful reintegration and to supervise such persons; assisting in reintegration is a consistent theme in the Job Analysis. Another set of duties is to apprehend and arrest parolees and others involved in criminal activity or probation violations, and to conduct contacts in the community to confirm compliance with parole. A PAI must stand ready to respond to emergency incidents to facilitate public safety and parolee supervision. A PAI may have to interact with groups effecting successful reintegration, including advocacy groups, law enforcement

agencies, and the courts. Respondent was obligated to participate in mandatory training, including firearms training. PAI's were to prepare correspondence and reports for administrative or judicial authorities using current technology and forms, and they had to operate current technologies for caseload management and data-bases.

7. Further, PAI's are tasked with investigating alleged parole violations using techniques such as surveillance and interviews, and then preparing investigation reports. A PAI is tasked with conducting drug testing of parolees. A PAI is to assess a parolee's needs such as for housing or medical care so as to promote reintegration; this could include assessing for and providing reasonable accommodations. This task can apply to persons before they are released. A PAI may need to make recommendations in administrative or judicial proceedings to promote reintegration and public safety, act as a witness for the Department in such proceedings, and the PAI may have to serve as a liaison between the Department and other agencies.

8. A PAI could be tasked with providing transportation to parolees, their families, or victims and witnesses to hearings, or jail, or job interviews within Department guidelines.

9. A standard CalPERS form titled "Physical Requirements of Position/Occupational Title" (Physical Requirements form) was received in evidence as Exhibit 13. It is a document designed to disclose an employee's job activities, including physical activities such as walking, standing, lifting and carrying. The form has columns where the amount of an activity can be charted; that is, whether an activity never occurs; infrequently occurs, meaning five to thirty minutes in a day; occasionally occurs, meaning 31 minutes to two and one half hours per day; frequently occurs, meaning two and one half to five hours per day, or lastly, constantly occurs, meaning over five hours per day.

10. The Physical Requirements form is to be completed and signed by the employer. The employer did not sign the document, which appears to have been filled out by Respondent. The document indicates that Respondent worked eight to eleven hours per day, and shows he carries or lifts anywhere from 10 to over 50 pounds “occasionally,” or up to two and one half hours per day. (Ex. 13, p. A78.) The document lists a number of physical activities, including sitting, standing, walking, running, crawling, kneeling, climbing, and squatting; others are listed such as bending or twisting. The Physical Requirements form states that the total of the first eight listed activities (sitting through squatting) should not exceed the usual hours worked per day. However all but one activity—running—is shown as a frequent activity, two and one half to five hours per day, and the eighth activity, running, is shown as occasional, or 31 minutes to two and one half hours per day. Thus, the seven “frequent” activities cover at least 17.5 hours per day, far exceeding the working hours. Other activities, such as bending and twisting are also shown as frequent activities.

11. Respondent testified that the PAI job entailed making arrests, conducting drug tests, parole sweeps, searching houses for weapons, transferring parolees, engaging with children’s services, providing court testimony, and generating “many” reports.

The Independent Medical Exams and the Testimony of the Physicians

12. Two physicians conducted an IME of Respondent. One was Robert B. Weber, M.D., F.A.C.C., Q.M.E., a cardiologist. The other was John M. Stalberg, M.D., J.D., a psychiatrist.

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DR. WEBER'S EXAMINATION AND OPINIONS

13. Dr. Weber graduated from The Medical College of Wisconsin in 1974. After serving an internship and two years of residency, he participated in a two-year clinical Fellowship in Cardiology at Huntington Memorial Hospital in Pasadena. He has practiced cardiology in southern California since completing his fellowship training in 1982. He became a qualified medical examiner in 2012.

14. Dr. Weber reviewed medical records, the job description and the Physical Requirements form. He examined Respondent on April 17, 2023, and he issued a report that same day. (Ex. 11.) During the examination, Respondent reported a history of high blood pressure, which was being managed with medication by his primary care physician, Dr. Nalos. Respondent told Dr. Weber that he checked his blood pressure at home, and it was generally in the range 150-160/90, though, at times, it was higher, once in the 200 systolic range. Respondent reported headaches two or three times per week, no blurred vision, and chest pain approximately three times per week, which he associated with flashbacks to negative interactions with some work supervisors.

15. Dr. Weber examined Respondent, whose blood pressure was 144/88 in the right arm, and 153/96 in the left arm. After examining him, Dr. Weber diagnosed Respondent with hypertension, hypertensive heart disease; atypical non-cardiac chest pain, noting a history of normal exercise stress test; obesity class 2; and history of PTSD. In a discussion of the case, Dr. Weber noted the hypertension was responding to medication. He reiterated that the chest pains were not cardiac in origin as Respondent performed well on his stress test and there were no abnormal EKG findings. Dr. Weber also noted left ventricular hypertrophy and normal left ventricular systolic function.

16. At the end of his report Dr. Weber opined that Respondent did not have an actual and present cardiologic impairment that arose to a substantial incapacity to perform his usual job duties. And, in light of normal stress test, it was Dr. Weber's opinion that the subjective complaint of chest pain did not arise to substantial incapacity.

17. On March 6, 2024, Dr. Weber issued a Supplemental Report, based on medical records that had been transmitted to him. (Ex. 14.) The records had been generated by Dr. Nalos between October 2022 and September 2023. Dr. Weber summarized various notes from that time period. He noted during an exam in April 2023, the patient was feeling better with his blood pressure being lower, and on June 27, 2023, Respondent's blood pressure was the best Dr. Nalos had seen, 118/79. Three months later, on September 25, 2023, Respondent reported high pressure readings at home, such as 190/100, or 165/95. Dr. Nalos's report referenced anxiety and fear on Respondent's part, of retaliation by parolees and retaliation at work, apparently from other workers or supervisors.

18. According to Dr. Weber's summary, the high blood pressure readings reported in September 2023 came when Respondent had been off work for a year. Notwithstanding that fact, Dr. Nalos attributed the high blood pressure to increased stress at work, and he opined Respondent should be permanently restricted from contact with inmates or parolees. (Ex. 14, p. A82.)

19. Dr. Weber, in his Supplemental Report, agreed with Dr. Nalos's opinion regarding Ruffin's career as a PAI, but maintained that from a strictly cardiovascular point of view, Respondent was not substantially incapacitated.

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20. Dr. Weber testified in a manner consistent with his reports, to the effect Respondent is not substantially incapacitated. He made clear that the stress test undertaken by Respondent had a significant impact on his opinion; he believed Respondent could assert himself physically, consistent with his job duties. He explained that the "S4" detected during the examination is not alone a serious issue, was not debilitating, and was not an abnormality with a middle-aged individual such as Respondent.

DR. STALBERG'S EXAMINATION AND OPINIONS

21. Dr. Stalberg received his medical degree from the State University of New York in 1971, and a Juris Doctor degree from the University of West Los Angeles School of Law in 1999. He was an intern and resident in psychiatry at Los Angeles General Medical Center (County/USC) between 1971 and 1975, and thereafter was fellowship trained for two years at University of Southern California (USC) Institute of Psychiatry, Law and Behavioral Sciences. Board certified, he has served as an Associate Clinical Professor at USC since 2018. He has provided expert testimony in California, Arizona, and the United Kingdom.

22. Dr. Stalberg examined Respondent on July 12, 2023. Before doing so he reviewed the job duty statement, the Physical Requirements form, and 68 pages of medical records. Further, in his report Dr. Stalberg stated that "this examiner is extremely knowledgeable about the California Department of Corrections and the Parole System and the requirements for duty." (Ex. 8, p. A38.)

23. Dr. Stalberg administered a test instrument to determine if Respondent might be malingering, and he determined that was not the case. Dr. Stalberg stated in

his report that Respondent's score on the test was "consistent with good faith, effort, and motivation to do well." (Ex. 8, p. A41.)

24. Dr. Stalberg noted that Respondent had been diagnosed with PTSD years before he examined Respondent, but he understood the condition, which stemmed from an inmate stabbing Respondent, had "eventually resolved." (Ex. 8, p. A39.) (Respondent testified that he was stabbed on October 29, 2008.)

25. Dr. Stalberg reported that Respondent has an actual and present psychiatric impairment, but it does not cause him to be substantially incapacitated to perform his usual job duties.

26. Dr. Stalberg testified in a manner consistent with his report; in his opinion Respondent is not substantially incapacitated. He stated that his diagnosis for Respondent would be PTSD in remission.

Respondent's Case

27. Respondent worked as a corrections officer from 2005 to 2010, and he then worked as a parole agent from 2010 to 2013. Budget cuts sent him back to the prison as a corrections officer; he received a promotion in 2013. After 2015 he again worked as a PAI. Respondent has been on medical leave for two years; he was a PAI when he went on leave. He has a pending workers' compensation case.

28. Respondent testified that loved the work but can't do it due to his high blood pressure and psychiatric issues. He testified that he cannot forget being stabbed and is afraid and nervous to be around the inmate culture; he is afraid around the inmates and fears that he will put the safety of others at risk. He does not believe he is mentally equipped to deal with parolees and inmates anymore. He noted that Kaiser

has advised him not to have contact with prisoners, and that Dr. Nalos has given similar advice.

LEGAL CONCLUSIONS

1. CalPERS has jurisdiction to determine whether Respondent is entitled to disability retirement. This conclusion is based on section 21151 and Factual Findings 1 through 5.

2. A person seeking disability retirement bears the burden of establishing the right to that benefit. (Evid. Code, § 500; *Lindsay v. County of San Diego Ret. Bd.* (1964) 231 Cal.App.2d 156, 160-61.) The standard of proof is preponderance of the evidence. (Evid. Code, § 115.) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. A disability, within the meaning of the public employees' retirement law, is a condition that is permanent or of extended and uncertain duration, as determined by the Board on the basis of competent medical opinion. (§ 20026.)

4. Whether a person is incapacitated or disabled must be judged based upon an examination of the regular and customary duties assigned to that person. (*Mansperger v. Public Employees Retirement System* (1970) 6 Cal.App.3d 873, 876.) To be disabled, it must be established that the employee in question is substantially unable to perform his or her usual duties. (*Mansperger, supra*, 6 Cal.App.3d at 876; *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 862.) Written job descriptions alone do not control the analysis of what a member's usual job duties are;

other evidence may be examined as well. (*Hosford v. Board of Administration, supra*, 77 Cal.App.3d at pp. 860-861.)

5. A workers' compensation ruling or settlement is not binding on the issue of eligibility for disability retirement because the focus of the issues and the parties are different. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207, citing *Bianchi v. City of San Diego* (1989) 214 Cal.App.3d 563, 567; *Summerford v. Board of Retirement* (1977) 72 Cal.App.3d 128, 132; *Reynolds v. City of San Carlos* (1981) 126 Cal.App.3d 208.)

6. The weight of the medical evidence indicates Respondent is not substantially incapacitated from acting as a PAI. Respondent offered evidence that Dr. Nalos and Kaiser have advised him to avoid contact with prisoners and parolees. That evidence cannot readily be weighed against the reports and testimony of doctors Weber and Stalberg, who opined Respondent is not substantially incapacitated. The evidence indicates that Dr. Nalos is a cardiologist and not qualified to opine on psychiatric issues. Respondent has been unable to carry his burden of proof, and his appeal must be denied.

ORDER

The appeal of Respondent Deon E. Ruffin from the denial of his application for Disability Retirement is denied.

DATE: 02/11/2025



JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings