

ATTACHMENT E

THE PROPOSED DECISION

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

**In the Matter of the In the Matter of the Application for
Industrial Disability Retirement of:**

ROBERT R. BOAS, Respondent,

And

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

Agency Case No. 2024-0480

(Amended Statement of Issues)

OAH No. 2024070720

PROPOSED DECISION

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this videoconference on October 17, 2024

The California Public Employees' Retirement System (CalPERS) was represented by Lee Bickley, Attorney.

Respondent Robert Boas (Respondent) appeared and represented himself. No appearance was made on or behalf of Respondent California State Prison, Calipatria, Department of Corrections and Rehabilitation (Respondent Calipatria).

Testimony and documents were received into evidence. The record was closed and the matter was submitted for decision on October 17, 2024

FACTUAL FINDINGS

Jurisdictional Matters

1. At the time Respondent filed his application for retirement, Respondent was employed as a Correctional Administrator by Respondent Calipatria. By virtue of his employment, Respondent is a safety member of CalPERS.

2. On November 15, 2023, Respondent filed an application for industrial disability retirement (application for disability retirement) on the claimed basis of a cardiological condition and an application for service retirement. Respondent retired effective December 1, 2023.

3. In support of his disability retirement application, Respondent submitted to CalPERS a Physician's Report on Disability prepared by his cardiologist, Sohaib Tariq, M.D., who diagnosed Respondent with hypertension and palpitations.

4. CalPERS requested and received medical reports from Athar Ansari, M.D. , Stuart Kramer, M.D. and Dr. Tariq, concerning Respondent's cardiological condition (hypertension) and obtained an independent medical evaluation (IME) from Kirk Chang, M.D. Dr. Chang issued a report of his evaluation on April 15, 2014, after

reviewing the available medical reports, CalPERS denied Respondent's application for disability retirement.

5. By letter dated May 7, 2024, respondent was notified of CalPERS's determination and advised of his appeal rights. Both Respondent Calipatria and State Compensation Insurance Fund were copied on the letter.

6. Respondent filed a timely appeal.

7. On July 23, 2024, Sharon Hobbs, in her official capacity as Chief, Disability and Survivor Benefits Division, CalPERS, executed an Amended Statement of Issues against Respondent and Respondent Calipatria.

8. The issue on appeal is limited to whether Respondent, at the time of the application, was substantially incapacitated from performance of his usual and customary duties as a Correctional Administrator for Respondent Calipatria based on his cardiological condition (hypertension).

Work History

9. Respondent began his career for the Department of Corrections and Rehabilitation (Department) at Centinela State Prison (Centinela) on August 3, 1998, first working as a Vocational Instructor and then a Garage Supervisor. After completing the Police Academy, he became a Correctional Officer in 2005. Over the years, Respondent rose through the ranks and served as acting Associate Warden for Centinela for two years before securing a permanent position with Respondent Calipatria in November 2021.

10. As the Associate Warden, Respondent managed custodial and business operations, including staff and inmate worker oversight, budget planning, and safety

programs. He was also responsible for addressing inmate appeals, participating in management meetings, and responding to emergency situations. Respondent would be required to intervene in physical altercations between inmates, protect fellow officers under attack, and respond to incidents involving severe inmate injuries or fatalities. While employed by the Department, Respondent witnessed fatal injuries among inmates, investigated murders, and conducted examinations of deceased individuals. The nature of his position required Respondent to be hypervigilant to prevent harm to himself or others.

History of Cardiac Complaints

11. Respondent testified he began experiencing cardiac issues due to excessive and ongoing stress when he was a Lieutenant at Centinela sometime between 2014 and 2015. Respondent independently sought medical treatment but did not take time off of work or ask for modified duties.

12. Medical records reflect Respondent's history of cardiac issue beginning on June 24, 2013, when an x-ray of Respondent's chest was performed. On April 17, 2014, Lorenzo Flores, M.D. at Pioneers Memorial Healthcare (Pioneers) documented Respondent's blood pressure at 146/91. There was then a four-and-a-half-year gap during which Respondent's blood pressure was recorded at 129/87, which is indicative of borderline systolic and diastolic hypertension. (Exh. B, B12.)

13. On January 28, 2019, Respondent was seen at the emergency department of Pioneers, reporting a rapid heartbeat that had persisted for four hours while he was at work. Respondent reported experiencing these symptoms intermittently over the past month. Tests were ordered and Respondent was discharged. A resting echocardiogram on March 13, 2019, revealed evidence of hypertensive heart disease

characterized by concentric left ventricular hypertrophy and left ventricular diastolic dysfunction. Despite a three and a half year gap in Respondent's medical records, Respondent continued to experience palpitations and episodes of his heart racing at rest during this period.

14. On October 5, 2022, Respondent was seen by Dr. Ceja, with complaints of uncontrolled blood pressure, hyperlipidemia and hearing loss. His blood pressure at the time was measured at 138/80. Dr. Ceja referred Respondent to cardiologist Dr. Tariq.

15. On November 14, 2022, Dr. Tariq examined Respondent who reported continued palpitations accompanied by shortness of breath, dizziness and headaches. Dr. Tariq attributed the palpitations and "fluttering sensation" Respondent was experiencing to be premature ventricular contraction (PVCs) and premature atrial contractions (PACs). Respondent's blood pressure during the visit was measured at 148/92.

March 22, 2023 Incident

16. On March 22, 2023, Respondent had a meeting with Respondent Calipatria's Business Services staff. As he was finishing up the meeting, Respondent began to feel foggy, had the beginnings of a headache and could feel his pulse at his throat. After ending the meeting, Respondent started reviewing inmate appeals but found it difficult to focus. A staff member noticed his condition and summoned the prison's emergency room nurse, who found Respondent's blood pressure at a dangerously high level (208/110) and was concerned he was having a stroke or heart attack. After initial hesitation, Respondent agreed to call 911. Paramedics who arrived

confirmed the elevated blood pressure, administered nitroglycerin and baby aspirin, and transported him to Pioneers' Emergency Department.

17. Upon arrival, Respondent's blood pressure, though high, appeared to be stabilizing (161/100). Respondent underwent a series of tests which included an electrocardiogram with an impression of "sinus bradycardia with sinus arrhythmia." (Exh. 8, p. A71.) Once his blood pressure was under control, Respondent was released and advised to follow-up with his primary care physician. Respondent did not return to work after that day and was placed on workers' compensation leave (i.e., temporary total disability).

18. On April 6, 2023, Respondent was seen by the workers' compensation doctor, Frederick Arbenz, M.D., who issued a Primary Treating Physician's Report (PR-2). Dr. Arbenz diagnosed Respondent with hypertension and premature atrial contractions (a type of arrhythmia that occurs when the upper chambers of the heart contract too early) and referred him to Dr. Tariq. (Exh. 8, p. A72.)

19. While on leave, Respondent continued to treat with Dr. Tariq. On April 13, 2023, Dr. Tariq noted that cardiac event monitoring had taken place in February 2023, and that Respondent, though still on Flecainide, an antiarrhythmic medication, continued to experience rare PVCs and PACs.

Workers' Compensation Evaluation

20. In connection with Respondent's workers' compensation claim, Respondent selected Dr. Kramer from a panel of qualified medical evaluators (QME). After examining Respondent and reviewing his medical records, Dr. Kramer issued medical reports dated September 15, 2023, January 14, 2024, and May 4, 2024.

21. In his September 15, 2023, report, Dr. Kramer diagnosed Respondent with hypertensive heart disease and an "unknown type of cardiac arrhythmia." (Exh. B, p. B12) Dr. Kramer concluded with "reasonable medical probability" that Respondent's hypertension was "industrially caused" on September 15, 2023. (Exh. B, p. B12). On May 4, 2024, Dr. Kramer also concluded Respondent's cardiac arrhythmia was "industrially caused." (Exh. D, p. B20.)

22. However, Dr. Kramer mistakenly believed Respondent had returned to work and was performing his regular duties. As a result, he did not issue Respondent any work restrictions.

CalPERS' Expert Opinion

23. At the request of CalPERS, Kirk Y. Chang, M.D., conducted an independent medical examination (IME) of Respondent and issued a report of his findings. Dr. Chang also appeared at the hearing and testified to the contents of his report.

24. At hearing, Dr. Chang indicated that in half of the cases he has reviewed for CalPERS he has found an applicant to be substantially disabled. Upon further questioning, however, Dr. Chang did admit that he has never found an individual who was diagnosed with hypertension to be substantially disabled by the condition unless the individual has suffered from stroke or congestive heart failure.

25. As part of his evaluation, Dr. Chang obtained Respondent's pertinent medical history, performed a physical examination of Respondent, and reviewed the medical records provided to him by CalPERS, the Calipatria State Prison Duty Statement, an illegible copy of the Physical Requirements of Position/Occupational

Title and Essential Functions. (The report, which is both unsigned and undated, does not indicate when Dr. Chang performed the examination.)

26. In response to the question, "Does the member have an actual and present cardiological (hypertension, palpitations) impairment that arises to the level of substantial incapacity to perform their usual duties?" Dr. Chang responded, "No.[Respondent's] hypertension is not disabling. While [Respondent] does report palpitations, he does not have a diagnosed arrhythmia." (Exh. E, p. B28.) Dr. Chang's response is contrary to Dr. Kramer's September 15, 2023, report which had been reviewed by Dr. Chang as part of his evaluation, which does diagnose Respondent with arrhythmia.

27. In response to the request, "Please list the specific Job Duties and/or Physical Requirements of Position the member is unable to perform for each substantially incapacitated body part/condition." Dr. Chang responded, "There are no work restrictions for [Respondent's] hypertension." (Exh. E, p. B28.) Dr. Chang did not provide a response as to whether Respondent would require any work restrictions for his palpitations.

28. In response to the question, "As of what date did the member's condition become 'substantially incapacitating'? What objective medical evidence leads you to your conclusion the member is substantially incapacitated based on the date provided?" Dr. Chang responded "N/A. [Respondent's] hypertension was never substantially incapacitating." (Exh. E, p. B28.) Dr. Chang did not indicate as to whether Respondent's palpitations were substantially incapacitating.

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LEGAL CONCLUSIONS

1. An applicant for an industrial disability retirement has the burden of establishing eligibility by a preponderance of the evidence. (*Rau v. Sacramento County Retirement Board* (1966) 247 Cal.App.2d 234, 238; *Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.) As such, the burden rests with Respondent to prove by a preponderance of the evidence that he is permanently disabled or incapacitated from performance of his duties as a correctional officer.

2. "Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations.].....The sole focus of the legal definition of "preponderance" in the phrase "preponderance of the evidence" is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.)

Applicable Law

3. The Public Employees' Retirement Law is set forth in Government Code section 20000 et seq. The general purpose of the public retirement system is "to prevent hardship to state employees who because of age or disability are replaced by more capable employees. The pension system serves as an inducement to enter and continue in state service [citation], and the provisions for disability retirement are also designed to prevent the hardship which might result when an employee who, for reasons of survival, is forced to attempt performance of his duties when physically unable to do so." (*Quintana v. Board of Administration* (1976) 54 Cal.App.3d 1018, 1021.)

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4. A state safety member of CalPERS shall be retired for disability regardless of age or amount of service if incapacitated for the performance of duty as the result of an industrial disability. (Gov. Code, § 21151, subd. (a).) A CalPERS member may file an application for disability retirement (Gov. Code, § 21152) while in state service, within four months after the discontinuance of state service or while on an approved leave of absence, or while the member is physically or mentally incapacitated to perform duties from the date of discontinuance of state service to the time of application (Gov. Code, § 21154).

5. Government Code section 20026 defines "disability" and "incapacity for performance of duty" as a basis of retirements as "disability of permanent or extended and uncertain duration, as determined by the board, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion."

6. "Any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, regardless of age or amount of service." (Gov. Code, § 21151.)

7. "Incapacitated for the performance of duty" means "the substantial inability of the applicant to perform his usual duties," as opposed to mere discomfort or disability. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 877.) Substantial inability to perform one's usual duties must be measured by considering the applicant's present abilities; disability cannot be prospective or speculative. (*Hosford v. Board of Administration of the Public Employees' Retirement System* (1978) 77 Cal.App.3d 854, 863.)

Evaluation

8. CalPERS presented the report and testimony of Dr. Chang. The report and testimony were not persuasive. Respondent's application for disability retirement was based on his cardiological conditions, specifically hypertension and palpitations. However, Dr. Chang failed to address whether Respondent's heart palpitations were substantially disabling. Additionally, Dr. Chang incorrectly asserted that Respondent had not been diagnosed with arrhythmia despite having reviewed medical records, including Dr. Kramer's September 15, 2023, report which explicitly diagnosed Respondent with arrhythmia.

9. However, simply because the medical evidence does not clearly demonstrate that Respondent is not disabled or incapacitated by reason of his cardiological conditions, it also fails to demonstrate that Respondent is substantially incapacitated for the performance of his usual duties as an Associate Warden. As an applicant for industrial disability retirement, Respondent bears the burden of proving by the preponderance of the evidence that he is entitled to the relief sought. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327.) Because Respondent did not present any medical evidence that would indicate that he is substantially incapacitated from performing his duties, he failed to carry his burden of proof. As a result, Respondent's application for disability retirement must be denied.

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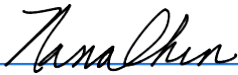
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ORDER

The decision of CalPERS is affirmed.

DATE: **11/18/2024**



Nana Chin (Nov 18, 2024 10:50 PST)

NANA CHIN

Administrative Law Judge

Office of Administrative Hearings