

ATTACHMENT E

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:**

**CHRISTINA A. ALDERETE-GRAY and CALIFORNIA MEDICAL
FACILITY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND
REHABILITATION, Respondents**

Agency Case No. 2020-1326

OAH Case No. 2021030563

PROPOSED DECISION

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on February 23, 2023, by videoconference and telephone from Sacramento, California.

Cristina Andrade, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Respondent Christina A. Alderete-Gray (Alderete-Gray) represented herself.

There was no appearance by or on behalf of respondent California Medical Facility, California Department of Corrections and Rehabilitation (CDCR). CDCR was

duly served with the Notice of Continued Hearing in this matter. Consequently, the matter proceeded as a default hearing against CDCR pursuant to Government Code section 11520, subdivision (a).

Evidence was received, the record closed, and the matter submitted for decision on February 23, 2023.

ISSUE

Does Alderete-Gray qualify for industrial disability retirement because her disability resulted from an injury that was the direct consequence of a violent act by an inmate or parolee?

FACTUAL FINDINGS

Jurisdiction and Procedural History

1. Alderete-Gray was previously employed by CDCR, most recently as a Personnel Specialist. By virtue of her employment, she was a state industrial member of CalPERS. At the time she stopped working for CDCR, she had the minimum service credit necessary to qualify for retirement.

2. On February 12, 2020, Alderete-Gray signed and filed an application for industrial disability retirement (IDR) with CalPERS. She claimed disability on the basis of a frozen shoulder, right ulnar nerve entrapment, right elbow joint pain, left wrist joint pain, back pain, and extreme anxiety.

3. On October 6, 2020, CalPERS initially denied Alderete-Gray's application for IDR. The denial was based on CalPERS' determination that Alderete-Gray was not substantially incapacitated from the performance of her usual and customary job duties as a Personnel Specialist at the time she filed her application. On October 30, 2020, CalPERS received Alderete-Gray's appeal of that denial.

4. On September 27, 2022, CalPERS changed its prior determination. It found that Alderete-Gray was substantially incapacitated from the performance of her usual and customary job duties as a Personnel Specialist at the time she filed her application based on her orthopedic (left shoulder, right elbow, left hand and wrist, and right wrist) conditions. However, CalPERS concluded that Alderete-Gray was ineligible for IDR based on its finding that her disability did not result from an injury that was the direct consequence of a violent act by an inmate or parolee. Consequently, it only granted Alderete-Gray non-IDR.

5. On October 26, 2022, CalPERS received Alderete-Gray's appeal of CalPERS' September 27, 2022 determination. On or around November 9, 2022, CalPERS and Alderete-Gray agreed that the sole issue on her appeal would be whether Alderete-Gray's disability qualified as industrial.

6. On November 22, 2022, Keith Riddle, in his official capacity as Chief of CalPERS' Disability and Survivor Benefits Division, signed and thereafter filed the First Amended Statement of Issues for purposes of the appeal. This hearing followed.

CalPERS' Evidence

7. At hearing, CalPERS offered Alderete-Gray's medical records, which document diagnoses of and resulting limitations from Alderete-Gray's orthopedic conditions. The records do not indicate that any of the orthopedic conditions resulted

from an injury that was the direct consequence of a violent act by an inmate or parolee.

Respondent Alderete-Gray's Evidence

8. Alderete-Gray testified at hearing. She started working for CDCR in October 2011. In 2012, she was injured while moving offices at work. Thereafter, she sustained further cumulative injury from repetitive keyboarding and mouse use, eventually rendering her unable to perform her job duties in November 2017. She then took extended leave until she applied for IDR. She has not worked in any job since November 2017.

9. Alderete-Gray is presently 47 years old. Her condition has worsened substantially, and she is often unable to get out of bed. She is completely reliant on her three adult children to help care for her. She is following the advice and recommended treatment of her doctors, who are unsure why her condition has deteriorated so significantly. So far, treatment has rendered little success.

10. Alderete-Gray does not dispute that she was never violently attacked by an inmate or parolee. However, she does not understand why CalPERS limits IDR for state industrial members to disability caused by violent acts of inmates or parolees. The CalPERS representative who assisted Alderete-Gray with the IDR application told her to check the box for IDR on the basis that her disability arose from her employment. Her disability has deprived her of completing sufficient years of service to earn a full retirement, and the non-IDR benefits she currently receives are woefully insufficient to support herself. Moreover, although Alderete-Gray was never attacked by an inmate or parolee, she was harassed by a former CDCR manager to the point where she had to be escorted to her vehicle at times.

LEGAL CONCLUSIONS

Burden/Standard of Proof

1. As the applicant, Alderete-Gray bears the burden of proving by a preponderance of the evidence that she is entitled to IDR benefits. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051; Evid. Code, § 115 [“Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.”].) A preponderance of the evidence means “evidence that has more convincing force than that opposed to it.” (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

2. Government Code section 20048 outlines the criteria for a state industrial member’s disability to be considered industrial:

“Industrial,” with respect to state industrial members, means death or disability resulting from an injury that is a direct consequence of a violent act perpetrated on his or her person by an inmate of a state prison, correctional school or facility of the Department of Corrections or the Department of the Youth Authority, or a parolee therefrom, if:

(a) The member was performing his or her duties within the prison, correctional school or facility of the Department of Corrections or the Department of the Youth Authority.

(b) The member was not within the prison, correctional school or facility of the Department of Corrections or the Department of the Youth Authority, but was acting within

the scope of his or her employment and is regularly and substantially as part of his or her duties in contact with those inmates or parolees.

3. Here, Alderete-Gray was a state industrial member of CalPERS. There is no evidence that Alderete-Gray's disability resulted from an injury that was the direct consequence of a violent act by an inmate or parolee. She concedes that she was never violently attacked by an inmate or parolee. Any harassment by a former manager does not qualify as a violent act by an inmate or parolee. Additionally, any erroneous representations by a CalPERS frontline employee regarding potential eligibility for IDR cannot override the statutory eligibility requirements. Thus, Alderete-Gray does not qualify for IDR.

4. To be sure, Alderete-Gray's testimony about her disability and the impact it has had on her life was credible and sympathetic. It is also true that a state safety member potentially qualifies for IDR if their disability merely results from an injury or disease arising out of and in the course of their employment. (See Gov. Code, § 20046.) However, the decision to treat state safety members differently from state industrial members for purposes of IDR is a policy decision by the Legislature. Neither CalPERS nor this tribunal has discretion to depart from the plain language of a state statute enacted by the Legislature. Any concerns regarding perceived unfairness or inadequacy must be addressed to the legislative branch of government.

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ORDER

The appeal filed by Christina A. Alderete-Gray is DENIED.

DATE: March 21, 2023

Wim vanRooyen

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings