BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of	)	
	)	
M. E.	)	OAH No. 25-2663-PER
	)	

AMENDED DECISION

I. Introduction

Mr. E. was permanently injured in the line of duty as an Anchorage Police Department ("APD") patrol officer when a suspect shot him in the thigh during a struggle. This injury left him unable to perform the physical duties central to patrol work and he was forced to resign. This would entitle him to occupational disability under the Public Employees' Retirement System ("PERS") unless he could perform a comparable job for which he was qualified by training or education. He subsequently accepted a position as a child sex crimes investigator ("CCI") with the Alaska State Troopers ("AST") in their City A office.

The Division of Retirement and Benefits ("DRB") denied Mr. E. occupational disability benefits when he declined to resign from his CCI position. DRB asserted that the CCI role was comparable to APD patrol work.

As discussed below, the roles of patrol officer and child sex crimes investigator are dissimilar in their required scope of duties, physical capacity, tempo, work environment, and psychological impact. The evidence demonstrates that they are not comparable within the meaning of AS 39.35.890(m). Accordingly, DRB's denial of Mr. E.' occupational disability benefits is REVERSED.

II. Background[1]

Respondent M. E. was a patrol officer with the Anchorage Police Department from 2018-2024. In that role, he was a member of the State of Alaska Public Employees' Retirement System defined contribution retirement plan.[2] While on duty September 4, 2021, he was shot in the leg while trying to arrest a suspect.[3] Mr. E. sustained serious, permanent injuries from that shooting.[4] An independent medical evaluator retained by DRB described Mr. E.' injuries as follows:

> He sustained a high-velocity gunshot wound to the right thigh on September 4, 2021, which caused vascular trauma and extensive soft tissue damage, including severe injury to the tibial division of the sciatic nerve. Despite appropriate surgical intervention, including complex nerve

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1 The parties stipulated that the entire record and each parties' exhibits be admitted into evidence. R. 28.

2 R. 70.

3 R. 72-73.

> transfers and neurolysis, along with intensive rehabilitation, [Mr. E.] has failed to regain functional motor recovery in the right lower extremity.[5]

After three years of unsuccessful attempts to rehabilitate the injury, Mr. E. had to resign from APD because he could no longer perform the physical duties of a patrol officer or an APD detective.[6]

PERS members who suffer a permanent injury on the job are eligible for occupational disability benefits unless they can work in a comparable job for which they are qualified by training or education.[7] Shortly before his resignation, Mr. E. received a job offer from Lieutenant Shane Calt of the Alaska Bureau of Investigation ("ABI"), who described the CCI position in an August 26, 2024 email.[8] Lieutenant Calt is the Deputy Commander of the Alaska Bureau of Investigation and one of the seniormost law enforcement officials in Alaska. Lieutenant Calt emphasized that the CCI job required no running, no pursuits, no emergency vehicle operation, no suspect confrontations, and consisted largely of reviewing reports of harm and conducting forensic interviews with children.[9]

Mr. E. provided Lieutenant Calt's email to the DRB Disability Unit. At 2:38 p.m. on September 4, 2024, a DRB representative responded enthusiastically, saying that the offer was "exciting," "prestigious," and that Mr. E. would still be eligible for an occupational disability because "*we know … the same strengths and abilities aren't required as a police officer*."[10]

That excitement lasted less than three hours. At 5:12 p.m. on September 4, 2024, the same DRB representative wrote Mr. E. again, saying, "I realized I do have direction now after we all powwowed over the Investigator position you've been offered by the Alaska State Troopers. …

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5 R. 72-73.
6 R. 26-27.
7 AS 39.35.890(m).
8 R. 24.
9 *Id.* ("As we discussed last week, I would like to offer you a position in City A, supporting the full-time Alaska Bureau of Investigation personnel as a two week on/two week off Long Term Non-Permanent employee. In this position you will be supporting the child crimes unit, primarily reviewing Reports of Harm and conducting forensic interviews with children. The vast majority of your time will be spent in an office setting or in a child advocacy center. This position does not require any emergency vehicle operations, running, calls for service, physical confrontations, or pursuit of suspects. As a NonPermanent position, it is subject to renewal each year, which is not guaranteed.").
10 R. 22 ("How exciting is this: Having the prestigious Alaska State Troopers get wind of your impending termination and hurrying to grab you up and offer you a position fulfilling a prestigious role such as they've offered to you!?! … I don't believe it would impact the ODIS eligibility nor the approval, as we know it's not a PERS position and the same strengths and abilities aren't required as a police officer.") (emphasis added).

[T]he position can't require the same skills and abilities as the position you were holding when you filed for disability."[11]

Mr. E. replied on September 13, 2024.[12] He explained that, because of his leg injury, it was impossible for him to work as a police officer due to the physical requirements of patrol work. He described APD's extensive physical demands and contrasted those duties with the CCI role, which he explained "requires no physical abilities, no emergency vehicle use, no requirement of chasing or subduing suspects, no weapons use requirements and is done completely from a desk."[13]

On September 16, 2024, DRB's Pension Adjustment/Disability Manager Robert S. notified Mr. E. that if he were approved for occupational disability as an APD patrol officer, he would be required to resign his CCI job.[14] DRB concluded that the APD patrol officer position and the CCI position had "too many similarities" based on the positions' job descriptions.[15] Mr. S. did not address the differences Mr. E. had raised.

On April 23, 2025, Mr. E. received notice that his occupational disability application was approved, with payments to take effect the first of the month following the termination of his benefits due to disability.[16] In the same letter, DRB also told Mr. E. "you must terminate your employment [as a CCI] within 30 days of your notification of approval of benefits or your application will be void and you will need to reapply."[17] On May 5, 2025, DRB informed him that he must resign his CCI role because DRB deemed the two positions "comparable" in duties; otherwise, his application would be void.[18] Again, this determination of comparability was based on the job descriptions of the positions, rather than Mr. E.' and Lieutenant Calt's explanations of how the positions differed. Mr. E. declined to resign. DRB subsequently voided his disability approval.[19]

Mr. E. wrote DRB on June 18, 2025, explaining at length that the positions were not comparable.[20] He described how a CCI deals exclusively with crimes involving children; how

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11 R. 21.
12 R. 26.
13 R. 27.
14 R. 55.
15 R. 55.
16 R. 28.
17 *Id.*
18 R. 30.
19 R. 8.
20 R. 15-17.

APD patrol officers are prohibited from performing such investigative work;[21] how his APD duties required continuous fieldwork while CCI duties occur almost entirely in indoor settings; and how CCI work requires specialized training. If Mr. E. did not take and pass "Child First," Sexual Assault Response Team, and Forensic, Experiential Trauma Interview trainings, he would lose his CCI job. At APD he was told specifically not to do the core function of his present job – interview child crime victims.[22] He also discussed the emotional toll of working exclusively on sex crimes investigations and then, almost exclusively on sex crimes involving children.[23]

DRB denied his occupational disability benefits on July 1, 2025.[24] Mr. E. appealed. An evidentiary hearing was held on March 16, 18, and 23, 2026.

III. Discussion

A. Legal Standard

A PERS member may appeal a decision by the administrator directly to the Office of Administrative Hearings.[25] The party requesting the hearing has the burden of proof and of going forward with evidence.[26] The standard of proof is preponderance of the evidence, meaning the party must show that a fact more likely than not is true.[27]

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21 E. and Worland testimonies. Lieutenant Calt and Sgt. Worland testified it is also AST practice that patrol officers do not interview child crime victims.

22 R. 10-20, E. testimony.

23 *Id*. Mr. E. wrote:

> A CCI, as the title suggests, investigates only one type of criminal activity-those where children are the victims. The moral and emotional compromises I must make to do this job are not comparable to those I regularly faced as a patrol officer with APD. The work settings for each position are also different. A CCI performs practically all his duties in an office setting or child advocacy center, whereas an APD police officer spends his time patrolling his assigned "beat." The work conditions of these positions are not comparable.
> …
>
> Since becoming a CCI, I now perform duties I was never required (or even permitted) to do as an APD police officer. A CCI focuses entirely on crimes against children. While I would occasionally deal with crimes against children as an APD police officer, I was not permitted, pursuant to APD policy, to contact the children regarding these crimes. An APD detective handled those contacts. These two positions are not comparable in this regard.
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> In addition, the environment I work in as a CCI has changed dramatically. Practically all my time is in an office setting or a child advocacy center. Primarily, I spend my time reviewing reports of harm to children or conducting forensic interviews with children. These activities constitute essentially all my time on duty and required specialized training that I never received as an APD police officer.

24 R. 8.

25 AS 39.35.006.

26 2 AAC 64.290(e).

27 *Id.*

B. Occupational Disability Benefits under PERS

This case requires the tribunal to decide whether Mr. E. has shown that it is more likely true than not that he is entitled to occupational disability benefits. His entitlement to those benefits turns on whether his current employment precludes his eligibility for them. AS 39.35.890(m) governs what subsequent work a PERS member may do and still receive occupational disability payments:

> [Occupational disability is a] physical or mental condition that the administrator determines presumably permanently *prevents an employee from satisfactorily performing the employee's usual duties or the duties of another comparable position or job available to the employee and for which the employee is qualified by training or education*; however, the proximate cause of the condition must be a bodily injury sustained, or a hazard undergone, while in the performance and within the scope of the employee's duties and not the proximate result of the wilful [sic] negligence of the employee.[28]

The Alaska Supreme Court has set out a familiar standard for statutory review: tribunals are to "interpret statutes according to reason, practicality, and common sense, taking into account the plain meaning and purpose of the law as well as the intent of the drafters."[29] A tribunal is to "presume that the legislature intended every word, sentence, or provision of a statute to have some purpose, force and effect, and that no words or provisions are superfluous."[30] The occupational disability statute should be interpreted in light of the stated purpose of the Public Employees' Retirement System, which is "to encourage qualified personnel to enter and remain in service with participating employers."[31]

AS 39.35.890(m) has two initial components governing what subsequent work a person seeking occupational disability may perform and remain eligible. First, the PERS member seeking occupational disability must be unable to perform the prior job or the usual duties of the prior job. It is undisputed that Mr. E. was forced to resign because he could no longer perform the essential functions of a patrol officer with the Anchorage Police Department. If a PERS member cannot perform the prior job or the duties of a prior job, the member must also be unable to perform either a comparable job or a job available to the member for which they are qualified by training or education. "Comparable" means capable of being compared.[32] Applied literally, any two jobs

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28 Emphasis added.

29 *Marathon Oil Co. v. State, Dep't of Natural Res.*, 254 P.3d 1078, 1082 (Alaska 2011) (*citations and quotations omitted*).

30 *Johnson v. State*, 380 P.3d 653, 656 (Alaska 2016).

31 AS 39.35.001.

32 Collins English Dictionary – Complete and Unabridged (2012 digital edition) (available at https://www.dictionary.com/browse/comparable) (last accessed May 20, 2026).

are theoretically capable of comparison. This would mean that any PERS member injured on the job who can get any other job of any sort would have a job capable of comparison. But such an interpretation leads to absurd results.[33] The practical interpretation of AS 39.35.890(m) requires that the subsequent position encompasses similar duties, in practice and not merely in a written job description, and required capacities, as opposed to simply falling within the same broad occupational classification.

Under this interpretation, this tribunal examines whether the evidence establishes that APD patrol work and AST child sex crimes investigation involve similar job duties, similar physical and mental demands, similar training requirements, and similar daily work realities.

C. An APD Patrol Officer is not Comparable to a Child Sex Crimes Investigator.

1. DRB's Position: All Law Enforcement is Comparable.

DRB's primary theory is categorical: because both positions involve law enforcement certification, any law enforcement job is comparable to any other. At the hearing, counsel for DRB stated that any two positions in the U.S. Army were comparable because they were all soldiers. This view equates "comparable" with "in the same industry." Mr. S. testified that both roles qualify as "peace officer" positions under regulation and that this alone justifies comparability. But this is all too facile. The statute requires a meaningful comparison of duties and capabilities, not superficialities such as labels or job families.

2. What the Patrol Officer Job Entails.

Both parties relied on the APD patrol officer position description.[34] That description lists eleven "functions" and lists the anticipated percentage of time each function requires. It further characterizes whether each function is essential or marginal.[35] Where the APD patrol officer position description characterized a function as essential, it means either: (a) "the reason the position exists is to perform this duty;" or (b) "removing this function would fundamentally change this position."[36] The APD patrol officer position description identifies the job duties as: (1) criminal investigations and effectuating arrests (30%), (2) report writing (30%), (3) radio communications (10%), (4) traffic enforcement (10%), (5) patrolling (10%), (6) Security (3%), (7) briefing attendance-fall in (2%), (8) briefing attendance-fall out (2%), (9) court and hearings

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33 *Premera Blue Cross v. State, Dep't of Com., Cmty. & Econ. Dev., Div. of Ins.*, 171 P.3d 1110, 1120 (Alaska 2007) (statutes should not be interpreted in a way that leads to absurd result).

34 R. 96-103.

35 R. 97.

36 R. 97.

(1%), (10) training (1%), and (11) other duties as assigned (1%).[37] Each duty is identified as essential; each duty is the reason why the job exists.[38]

Prior OAH precedent wisely counsels that exclusive reliance upon a position description is insufficient.[39] Rather, the inquiry should focus upon what the employee actually does at their job.[40] Mr. E. testified that patrol work is highly physical, unpredictable, and fast paced. He testified that as a patrol officer he responded to a wide variety of crimes and disturbances. He made multiple "hands-on" arrests daily, a task which included handcuffing suspects. He explained that at least once a week a situation would arise and become so tense as for him to "break leather."[41] He was constantly moving throughout his shift. He would have to complete and submit all written investigative reports by the end of the day. Then each day he would start anew, with every day being different and having little or no connection to the events of the day before. He testified that it was APD policy that, in the event of a sex crime, or a crime involving a minor, patrol officers were specifically instructed *not to investigate* and were to only stabilize and preserve the scene until persons qualified to investigate sex crimes or investigate crimes involving minors arrived. He regularly received training in a variety of weapons systems or how to do "cop stuff."[42] While at APD he never received training on how to investigate sex crimes or crimes involving minors.

Finally, APD officers, including detectives, must continually maintain the ability to pass a rigorous physical fitness test. This test, called the "Job Task Simulation Test," or JTST, requires the applicant to run about 400 yards through obstacles, scaling a fence, long jumping, up and down stairs, a push/pull simulation, and a victim rescue drag, all while wearing a weighted belt and vest, "*equivalent to the weight a Patrol Officer carries while performing job-related tasks*."[43]

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37 R. 97-98.

38 R. 97.

39 There are numerous cases discussing whether an occupational disability applicant has suffered a permanent injury or whether their employment was the cause of the injury. Despite diligence searching by the parties' able counsel and by this tribunal, only one case addressing comparability of subsequent employment was found. In *ITMO C.R.*, OAH No. 08-0385-PER, the applicant suffered severe carpal tunnel injuries in her office position with the state. She found a subsequent office job in the private sector and was denied occupational disability because the position description was similar to her state job. But at hearing it was shown that her duties in the subsequent job were vastly different and did not involve things such as typing that aggravated her wrists. In that case, ALJ Whitney probed beyond the written job description into the actual duties C.R. performed and determined her eligible for occupational disability. *Id.* at 9-10.

40 *Id.* at 7-9.

41 "Break leather" is an expression for a law enforcement officer unholstering their weapon.

42 "Cop stuff" is this tribunal's phrase. Mr. E.' testimony emphasized the myriad, dynamic tasks that characterize a patrol officer's job. Mr. E.' patrol training often involved weapons systems or tactics.

43 R. 40.

Inability to pass this test would result in termination of employment. Mr. E. cannot pass this test.[44] Further, this requirement also applies to APD detectives.[45] AST has a similar test that all patrol officers must also pass.[46] That Mr. E. cannot pass the very test required by APD to emulate the physical demands of his prior job is powerful evidence of what these jobs actually entail.

3. What the CCI Position Entails.

The record also contains the AST CCI position description, which states the job duties as:

> Conducts follow-up investigations related to domestic violence and sexual assault (DVSA) cases. Coordinate investigative activities with the responding trooper/officer and the prosecutor assigned to the case. Follow-up investigative activities include locating and interviewing witnesses, investigating prior crimes committed by the offender, determining if there are any additional victims, and conducting numerous other investigative actions recommended by the prosecution.[47]

In practice, the CCI job centers on lengthy, detailed investigations into sexual assault cases mostly involving child victims. Mr. E. testified that about 75% of his caseload is investigating sex crimes against minors and 23% is other sex crimes. While he might accompany a state trooper who will arrest a suspect, Mr. E. does not effectuate the arrest. He testified that he does not (and cannot) wear an AST uniform because he is not a traditional "blue shirt" Alaska State Trooper patrol officer. Nor can he pass the AST physical test, which includes pullups, sit ups, and a mile run,[48] or perform the physical duties of an AST trooper. He testified that he never goes on patrol, the very essence of his job with APD. He either works at a desk at the AST City A office, at a child advocacy center, or at the hospital. Rather than completing all investigations by the end of his shift and starting each new day from scratch, child sex crimes are investigated over weeks and months. Mr. E. testified that there is a significant and grinding emotional toll in working almost exclusively with child sex crimes that was not a component of his APD patrol work. As AST Lieutenant Calt explained, in other areas of police work there are "high five moments" as when an officer catches a dangerous, fleeing suspect, or discovers illegal drugs. In contrast, Lieutenant Calt testified there are rarely such "high five moments" in child crimes investigations.

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44 R. 72 (Division's independent medical evaluation).
45 Worland testimony.
46 Calt testimony.
47 R. 106 (Alaska State Trooper job description).
48 Calt testimony.

The physical differences between the jobs are profound. APD patrol officers and detectives must be able to, at any time, pass APD's physical fitness test. If they are unable to pass the physical fitness test, a patrol officer, like Mr. E., would lose their job. Lieutenant Calt testified that a "blue shirt" patrol officer position with AST carries substantial similarities to an APD patrol position. Each day is highly varied, although over a much larger geographic territory than an APD patrol officer. AST does not require submission of written reports at the conclusion of each shift, rather, they must be completed in a matter of days and not weeks or months. State troopers do not investigate sex crimes. Sgt. Worland and Lieutenant Calt both testified that Alaska State Troopers must be able to pass a physical fitness test that Mr. E. could not pass because of his service-related injury to his leg. There is no physical fitness test for the CCI position. The lack of any physical fitness requirement is persuasive evidence of the distinctions between the positions.

4. Differences in Training and Qualifications.

DRB argues that Mr. E. was qualified for the CCI role because he is Alaska Police Standards Council-certified[49] and completed the APD academy. But Lieutenant Calt, who is responsible for hiring CCIs, testified that those are mere prerequisites. He testified that Mr. E. was a *minimally qualified* candidate and could not be a CCI absent additional professional training. For example, Lieutenant Calt testified that Mr. E. had not completed any required specialized courses and had never conducted trauma-informed forensic interviews of child crime victims. Mr. E., and any other CCI, was required to take and pass Child First Forensic Interview Training, Sexual Assault Response Team ("SART") training, and Forensic Experiential Trauma Interviewing. Lieutenant Calt testified that any prospective CCI recruit who was unable to complete those classes and subsequent testing would lose their position. Further, Lieutenant Calt testified that the City A CCI positions are the hardest positions in Alaska law enforcement to fill.[50] He characterized them as the least-attractive job in law enforcement. In a September 16,

[49] The Alaska Police Standards Council is a division within the Department of Public Safety charged with establishing and enforcing minimum standards for certified police officers, correctional officers, probation and parole officers, and village public safety officers. AS 18.65.130 *and* Alaska Administrative Code Title 13, Part 6, Chapter 85.

[50] City A is a remote Alaska village about 400 miles by air from Anchorage. Per the State of Alaska, Division of Community and Regional Affairs Community Database, it has a population of 5,948 people as of 2025. Available online at https://dcra-cdo-dcced.opendata.arcgis.com/. Mr. E. testified that City A is not connected to the North American road system, that facilities and infrastructure are limited, and it would be difficult for most Americans to understand living and working in City A without going there. Mr. E. testified that he works two weeks on and two weeks off. This means he flies from Anchorage to City A to work for two weeks. He lives in a dormitory-like setting with a counterpart CCI, Sgt. E. F.. Because of the two weeks on/two weeks off nature of the position, he misses

2024, email, Lieutenant Calt listed 52 examples of APD patrol officer duties. He went on, "[o]f those, an ABI child crimes investigator needs to do about 7 of them." Lieutenant Calt's testimony powerfully undercuts DRB's assertion that CCI work is comparable to urban police patrol work.

5. Policy Implications of DRB's position.

DRB told Mr. E. he would receive occupational disability only if he resigned the CCI position. Yet this stands in direct contrast to the legislature's stated policy goal: that qualified personnel remain in public service.[51] DRB's *quid pro quo* that Mr. E. stop investigating child sex crimes to keep his occupational disability conflicts with that statutory purpose by pressuring a disabled person to abandon a vital position that few others are willing or able to fill.

DRB also raises practicability concerns about allowing occupational disability benefits in this circumstance: "Mr. E.' interpretation would create a standard with no limiting principle. Any variation in duties could be used to claim that a position is not comparable, allowing members to receive benefits while continuing to work in their profession."[52] That is not so. This Decision holds that pervasive differences between what a person does at a job matter more than whether two jobs are broadly in the same field. In this case, being a patrol officer is profoundly different than being a child sex crimes investigator. Outside of the superficial similarities of being in law enforcement (carrying a badge and a gun), what these jobs do, Mr. E.' day-to-day work life, is vastly different.

DRB's concern is also contradicted by its own testimony. Mr. S., DRB's sole witness and the person who handled Mr. E.' occupational disability application, testified that he has worked with DRB for thirteen years and handles about six occupational disability applications a year. But he has never seen an application involving this kind of comparability dispute. One case in over a decade does not threaten the integrity of the retirement system. Being able to perform a comparable job will be more likely in jobs that are fungible. But in a highly specialized, physical

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essentially half of all holidays and events with his family, including his children. Per the State of Alaska, Department of Public Safety's "Felony Level Sex Offenses 2024" (the most recent such report issued), Western Alaska has a rate of 408.6 felony-level sexual assaults per 100,000 residents, more than double the statewide rate of 184.9 felon-level sexual assaults. Available online at https://dps.alaska.gov/wp-content/uploads/2026/04/Felony-Level-Sex-Offenses-2024.pdf (*see also* 2 AAC 64.300 regarding administrative notice). These differences and the challenges of working in rural Alaska investigating sex crimes are significant. But the crux of this Decision is that Mr. E. is medically disqualified from performing police patrol work in any Alaska community.

[51] AS 39.35.001 provides, "The purpose of this chapter is to encourage qualified personnel to enter and remain in service with participating employers by establishing plans for the payment of retirement, disability, and death benefits to or on behalf of the members."

[52] Division's Post-Hearing Brief at 10.

job such as patrol officer, it is more likely any permanent injury will keep an individual from performing comparable employment.

6. Incidents of Employment Will Very Rarely Influence Comparability.

In its proposal for action, DRB requested this tribunal clarify the significance, if any, of the non-permanent nature of Mr. E.' CCI position. DRB's point is well-taken and this Amended Decision so clarifies.

The CCI position is a long-term, non-permanent position. This means it is subject to appropriation every year by the legislature; the legislature must act annually to fund the position. There are numerous other incidents of employment that are different between Mr. E.' APD position and his CCI position. While at APD, Mr. E. was a member of a union, received employer-provided health insurance, received employer contributions to his retirement, had a reasonable expectation of continued employment, had a path of career advancement within his field, and went home to his family at the end of every shift. Now, Mr. E. pays for his own health insurance, does not receive employer contributions to his retirement, is not in a union, does not have a reasonable path of career advancement, and spends half his life living in a dormitory in a village off the road system with a tragically high rate of sexual assault. These differences are profound, impose a significant burden on Mr. E. and his family, and contribute to the difficult in filling the City A CCI position that Lieutenant Calt described.

However, these incidents of employment are not dispositive in this case, and they would be unlikely to be dispositive in a future case.

As noted above, in Mr. S.' thirteen years with DRB, he has never seen a case disputing comparability. Despite diligent searches by this tribunal and both parties' capable attorneys, the only on-point precedent is a sixteen-year-old administrative law decision. Situations such as Mr. E.' are thankfully rare. There are some jobs where physical ability is the job, and loss of significant physical ability necessarily means not being able to do comparable work. Being a patrol officer who permanently loses significant leg function after a gunshot wound is such a situation.

It is also worth remembering that an occupational disability benefits applicant is in a different position than the typical job seeker. A person looking to start or continue a career would consider pay, geography, job security, benefits, and other factors in deciding what job to take. But

in occupational disability the question revolves around receiving benefits because the applicant cannot perform the "*duties* of another comparable position[.]"[53]

In almost all cases of occupational disability the actual duties of the job will be dispositive in determining comparability. It will not be necessary to consider the incidents of employment (permanent status, union representation, retirement and health benefits, geographic location, other factors). In this case, the jobs duties are plainly different and there is no need to consider the non-permanent nature of the job or any other benefits. Considering future circumstances is difficult because "my eye reaches but little ways"[54] and the tribunal cannot divine what complicated and tragic situations may arise. But the starting point, and usually ending point, of comparability for occupational disability will be what the prior and current jobs actually do. As a practical matter, if Mr. E. could perform the job duties of a patrol officer in any Alaska community, he would not be occupationally disabled. An occupational disability applicant who is forced to take a job in a distant community with unfavorable benefits and other incidents of employment is likely to be taking that job *because* they cannot do their old job and the new job is the best fit they could find. Incidents of employment might warrant some independent consideration in exceedingly rare circumstances. But an occupational disability applicant cannot refuse a truly comparable job with substantially similar tasks and demands merely because the job is less advantageous than their prior job. To rely heavily on incidents of employment in addition to job duties would elevate "comparable" to "near identical," which the statutory language does not support.

IV. Conclusion[55]

AS 39.35.890(m) requires Mr. E. to establish two elements to qualify for occupational disability benefits. First, he must show that he cannot perform the usual duties of his prior job as an APD patrol officer. This fact is uncontested: he had to resign because of permanently disabling

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53 AS 39.35.890(m) (emphasis added).

54 Theodore Parker, 1810-1860.

55 Mr. S. was the last witness called at the hearing. At the end of the last day of the hearing, Mr. S. suggested Mr. E. might also not be able to receive occupational disability because he may be earning as a CCI more than 75% of his pay as an APD patrol officer. This assertion was not factually developed, was not mentioned in DRB's July 1, 2025, denial letter, and arose at the end of the three-day hearing. DRB subsequently filed a pleading expressly disavowing this argument. DRB stated, "it will not deny Mr. E.'s application for occupational disability benefits under AS 39.35.890, or terminate any occupational disability benefit provided to Mr. E., solely on the basis that Mr. E. occupies a position that provides compensation of 75% or more of the salary used to calculate the member's Public Employees Retirement System of Alaska under 2 AAC 35.291(a). It is also the Division's position at this time that all other applicable laws and policies should continue to apply in full force and effect." Accordingly, this tribunal concludes that DRB has waived this argument and may not deny Mr. E. occupational disability while he is in his current CCI job based on the amount of money he is paid. *See McDowell v. State*, 23 P.3d 1165, 1166 (Alaska 2001) (generally barring claim splitting).

injuries sustained in a line-of-duty gunshot injury. Second, he must show that he cannot perform the duties of a comparable position or a job available to him for which he is qualified by training or education. The evidence demonstrates that his prior position and current position differ substantially in physical demands, scope of duties, training requirements, daily operations, and emotional burden. Therefore, the positions are not comparable. In addition, Mr. E.' was not qualified by training or education from his time as a patrol officer to perform the duties of a child sex crimes investigator.

Accordingly, DRB's denial of Mr. E.' application for occupational disability benefits is REVERSED. DRB shall provide Mr. E. occupational disability payments from May 1, 2025, the first of the month after the April 25, 2025, notification that his application had been approved, as required by AS 39.35.890(m).

DATED: September 4, 2026.

By: SIGNED
Robert H. Schmidt
Administrative Law Judge

ADOPTION

This Decision is issued under the authority of AS 39.35.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 4th day of September 2026.

By: SIGNED
Robert H. Schmidt
Administrative Law Judge

[This document has been modified to conform to the technical standards of publication. Names may have been changed to protect privacy.]