

ATTACHMENT A

THE PROPOSED DECISION

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

In the Matter of the Statement of Issues Against:

**IRENE SANTIAGO and AVENAL STATE PRISON, CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION,
Respondents**

Agency Case No. 2020-0061

OAH No. 2020070126

PROPOSED DECISION

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via telephone and video conference on July 19, 2021, from Sacramento, California.

Helen Louie, Staff Counsel, represented the California Public Employees' Retirement System (CalPERS).

There was no appearance by or on behalf of Irene Santiago (respondent), Avenal State Prison (Avenal), or California Department of Corrections and Rehabilitation (Department) (collectively respondents). CalPERS established that it served respondents with a Notice of Hearing. Consequently, this matter proceeded as

a default hearing against all respondents pursuant to Government Code section 11520, subdivision (a).

Evidence was received, the record closed, and the matter submitted for decision on July 19, 2021.

ISSUE

Based on her right hand/wrist (carpal tunnel syndrome and ganglion cyst), left hand/wrist (carpal tunnel syndrome and de Quervain's tenosynovitis), left elbow (ulnar nerve damage), right elbow, bilateral shoulders, and heart (coronary artery disease, hypertension, and hypercholesterolemia) conditions, is respondent permanently and substantially incapacitated from performing her usual and customary duties as a Case Records Technician for the Department?

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent was employed with the Department as a Case Records Technician. On March 6, 2019, she signed an application for disability retirement, which CalPERS received on March 20, 2019.

2. Respondent's application does not list her last day on the Department's payroll and states her retirement date would be: "Upon completion of benefits." Physicians' reports state she left work in December 2018 due to her orthopedic conditions. She described her disability as: right hand/wrist (carpal tunnel syndrome and ganglion cyst), left hand/wrist (carpal tunnel syndrome and de Quervain's

tenosynovitis), left elbow (ulnar nerve damage), right elbow (no diagnosis to date), bilateral shoulders (no diagnoses to date), and heart (coronary artery disease, hypertension, and hypercholesterolemia). Her limitations or preclusions are: "Avoid stressful environments and situations and avoid excessive use of both upper extremities." Respondent explained that due to her disabilities and physicians' restrictions, she was no longer able to perform the essential functions of her position. Respondent reported her "CT," presumably carpal tunnel, injuries occurred on June 16, 2011, and December 1, 2011. She described the cause of her conditions:

As a result of repetitive motion and labor intensive activity such as pulling lifting and carrying heavy files and prolonged typing I developed my bilateral upper extremity injuries. My heart condition has resulted due to the constant stress and strain associated to my job over a sustain period.

(Grammar and syntax original.)

3. By letter dated September 23, 2019, CalPERS denied respondent's application. CalPERS informed respondent that the determination was based on "reports prepared by Jonathan Ng, M.D., Ashok Verma, M.D., Alexander Majors, M.D., Scott Graham, M.D., Dennis Miller, D.O., Charles Xeller, M.D., and Thomas Leonard, M.D." Based on the these reports, CalPERS determined respondent was not substantially incapacitated from performing the usual job duties of a Case Records Technician with the Department on the basis of her orthopedic and cardiological

conditions. The letter notified respondent she had 30 days to file a written appeal. By her undated letter,¹ respondent appealed CalPERS's findings. This hearing followed.

Job Duties of a Case Records Technician

4. CalPERS submitted two documents to list and explain respondent's job duties. The first is the "Physical Requirements of Position/Occupational Title" that respondent and a "Return to Work Coordinator" signed on March 5, 2019. The second is an "Avenal State prison Division of Adult Institutions Correctional Case Records Offices Duty Statement" for a Case Records Technician.

5. The physical requirements of a Case Records Technician at Avenal entail:

Constantly (over 6 hours): Sitting, bending the neck and waist, twisting the neck and waist, fine manipulation, simple grasping, repetitive use of hand(s), keyboard use, and mouse use;

Frequently (3-6 hours): Standing and walking.

Occasionally (up to 3 hours): Reaching above and below the shoulder, pushing and pulling, lifting and carrying zero to 10 pounds, and exposure to dust, gas, fumes, or chemicals.²

¹ At hearing, CalPERS asserted it received the appeal on October 18, 2019.

² For each of these tasks, respondent checked both the "never" and "occasionally" boxes.

6. The job description for a Case Records Technician explains the position relates to “processing, maintaining, and controlling inmate and parolee records.” Duties involve accessing and maintaining inmate and parolee files, following security protocol, ensuring accurate data entry, and preparing and reviewing files. In addition to data entry, the Case Records Technician must scan and sort documents, be able to use the case process programs, type various forms, and communicate in writing, by telephone, and in person.

Expert Opinion, Charles Xeller, M.D.

7. On June 12, 2019, at CalPERS’s request, Charles F. Xeller, M.D., conducted an Independent Medical Evaluation (IME) of respondent. Dr. Xeller prepared a report and testified at hearing. Dr. Xeller is a board-certified orthopedic surgeon and holds subspecialties in hand and upper extremity surgery. In 1979, he obtained his medical degree from the State University of New York (SUNY) at Downstate Medical School in New York. Between 1980 and 1984, he completed an orthopedic residency at SUNY Stony Brook, New York. Dr. Xeller currently treats orthopedic patients and works four days per month in an emergency department. He also performs medical evaluations for worker’s compensation and CalPERS. Dr. Xeller is licensed in California, Texas, Michigan, and Nevada.

8. As part of the IME, Dr. Xeller interviewed respondent, who was 47 years old at the time, obtained a medical history, and conducted a physical examination. He reviewed the Physical Requirements form and job description for respondent’s position as well as respondent’s medical records CalPERS provided.

9. Dr. Xeller’s review of the medical records revealed respondent had right carpal tunnel release surgery with volar ganglion cyst excision in 2012 and left carpal

tunnel release surgery in 2013. She had left cubital tunnel release in 2014. In 2015, respondent was being treated for de Quervain's tenosynovitis and was scheduled to undergo surgical release of the left first dorsal extensor compartment. The surgery could not go forward, however, because respondent had "uncontrolled hypertension."

10. Respondent saw a worker's compensation doctor in 2018 based on her left wrist pain. He determined the cause of her condition was "cumulative trauma" from work. After respondent was cleared by her cardiologist for surgery, the surgical release of the left first dorsal extensor compartment to address her de Quervain's tenosynovitis was performed on December 10, 2018. Following surgery, respondent was unable to use her left hand and her worker's compensation doctor took her off work. She began physical and occupational therapy in January 2019.

11. On March 7, 2019, Dennis K. Miller, D.O., completed CalPERS's form "Physician's Report on Disability." He reported respondent was "under medical care" from January 31, 2012 to February 2, 2019, based on a disability that began on June 16, 2011. Respondent's was industrial "due to repetitive movement and burning and a cyst has developed." Dr. Miller opined respondent was incapacitated from performing her job duties and the incapacity would be permanent.

12. On March 15, 2019, Dr. Miller completed a "Physician's Report on Disability" related to respondent's cardiac condition. He reported she was "under medical care" since November 11, 2013. Dr. Miller opined respondent was permanently incapacitated from performing her job duties based on "Anxiety/stress secondary to work environment." His diagnoses were: "1) Situational stress, anxiety, depression, tearful, anxious. 2) Cardiac disease/post [coronary artery bypass graft]." He reported that respondent was "unable to have mental capacity to be aware/alert at all

times, in order to be aware of surroundings while working in an institutional environment.”

13. Dr. Xeller examined respondent and determined her grip strength was good in both hands, though slightly lower in the left hand. Respondent had good range of motion in both wrists. She had no trigger fingers, minimal pain in the wrists and hands, and responded well to her surgeries. Respondent had some pain and tingling remaining from her recent de Quervain’s surgery in December 2018.

14. Both Dr. Xeller and respondent agreed she responded well to the surgeries and she could return to work based on her orthopedic conditions. She was not substantially disabled from performing her job duties due to her bilateral carpal tunnel syndrome, ganglion cyst, de Quervain’s, elbows, or shoulders. At hearing, Dr. Xeller clarified that respondent had “lots of inflammation,” and he was unable to say “she won’t get more [orthopedic] issues” in the future. Dr. Xeller acknowledged he is not a cardiologist and deferred to the appropriate medical professional, but opined, “the bigger fish to fry in this incident is her ongoing coronary artery disease and hypertension.”

Expert Opinion, Thomas Leonard, M.D.

15. On August 22, 2019, at CalPERS’s request, Thomas Leonard, M.D., conducted an IME of respondent. He prepared a report and testified at hearing. Dr. Leonard has been licensed in California since 1969. He graduated from New York Medical College in 1967. Dr. Leonard completed a rotating internship at U.S. Public Health Service in San Francisco in 1968 and a residency in internal medicine at U.S. Public Health Service/University of California in 1972. He is board certified in internal medicine with subspecialties in cardiology and pulmonology. He serves as a Qualified

Medical Examiner for worker's compensation cases and until two years ago performed IMEs for CalPERS.

16. Dr. Leonard reviewed the same medical records as Dr. Xeller, addressed above. The pertinent cardiology records included an August 24, 2016 IME report with Robert B. Weber, M.D. Dr. Leonard summarized the report, which included, in part, this overview of respondent's cardiological history:

Patient stated that in 2014, in the course of a preoperative evaluation prior to a left elbow surgery, a physician heard a heart murmur prompting the physician to refer her to a cardiologist who performed a stress test, which was found to be positive for myocardial ischemia, indicating the presence of coronary artery disease. She underwent a heart catheterization on 05/07/15, which revealed severe coronary artery disease. She subsequently underwent coronary artery bypass graft surgery on 05/11/15. The operation was uneventful, however, she subsequently developed exertional dyspnea, fatigue, and chest pain and a repeat heart catheterization revealed new occlusions leading to 3-stent implants. Patient stated that weeks ago, her symptoms of chest pain and shortness of breath recurred. On that date, her blood pressure was 151/100. She saw her cardiologist who repeated a coronary angiography prompting to place 2 more stents.

Dr. Weber opined that being exposed to extreme temperatures, humidity, wetness, and "particularly exposure to dust, gas fumes, or chemicals" at her job

contributed to developing "very premature coronary artery disease of a very aggressive nature..." Dr. Leonard's summary of Dr. Weber's report stated:

An individual with such extensive and aggressive coronary artery disease, as this patient has demonstrated, is subject to symptomatic ischemia, that is episodes of insufficient oxygen/blood supply to areas of the heart muscle and the propensity to experience these events would be made likelier and occur at a lower threshold while exposed to dust, gas fumes, and chemicals, which may interfere with the respiratory process and, therefore, adequate delivery of oxygen into patient's bloodstream.

Dr. Weber opined there were no duties respondent could not perform due to her physical condition. He concluded respondent was not substantially incapacitated from performing her job duties and any restriction related to the extreme temperatures, dust, and gas fumes would be prophylactic.

17. In April 2018 and May 2019, respondent complained of intermittent chest pain. In May 2019, she presented to the emergency department at Kaweah Delta Medical Center following two days of chest pain, even after she took nitro glyceride. She was treated and admitted, pending an angiogram. Her cardiologist performed a "left heart catheterization. LV angiography. Selective left and right coronary angiography. Saphenous vein graft and LIMA angiography." His diagnosis was "coronary artery disease with unstable angina."

18. Dr. Leonard's medical review revealed respondent had a normal "treadmill study," or stress test, and a coronary angiogram on May 2, 2019 was normal.

Her cardiologist found no need for further intervention. Based on these reports, Dr. Leonard opined respondent's cardiac procedures were successful and she was "doing quite well." He found no evidence of progression of her cardiovascular disease between the time of her normal stress test and angiogram and the time of his evaluation. At hearing, Dr. Leonard described the angiogram as the "gold standard" in determining whether the patient has reduced blood flow. The process allows the cardiologist to physically see the vessels.

19. In his physical examination of respondent, Dr. Leonard found no cardiopulmonary abnormalities. He opined respondent was not substantially incapacitated from performing her job duties.

SUPPLEMENTAL REPORT

20. On December 16, 2019, Dr. Leonard issued a supplemental report at CalPERS's request. Dr. Leonard received additional medical reports regarding respondent's "microvascular disease" and her continuing complaints of chest pain radiating to her jaw. Dr. Leonard explained at hearing that microvascular disease refers to "extremely small vessels" that "we can't see" and that "cannot be documented." In his "whole career," he has never seen evidence of this disease.

21. Throughout her cardiovascular history, respondent showed symptoms of "large vessel disease," and she responded to treatment. When respondent continued to complain of chest pain, her doctors determined it must be due to microvascular disease, but there is no evidence for this. The multiple doctors who indicated its existence on respondent's medical charts seem to refer to each other rather than to testing. Dr. Leonard opined there is no objective medical evidence of respondent's diagnosis and his opinion was unchanged.

PRINCIPLES OF LAW

22. By virtue of respondent's employment as a Case Records Technician at Avenal, she is a state industrial member of CalPERS subject to Government Code section 21150.

23. Respondent has the burden of proving her eligibility for disability retirement benefits by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052, fn. 5.) Evidence that is deemed to preponderate must amount to "substantial evidence." (*Weiser v. Board of Retirement* (1984) 152 Cal.App.3d 775, 783.) To be "substantial," evidence must be reasonable in nature, credible, and of solid value. (*In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.)

24. To qualify for industrial disability retirement, respondent had to prove by competent medical opinion that, at the time she applied, she was "incapacitated physically or mentally for the performance of his or her duties." (Gov. Code, § 21156.) As defined in Government Code section 20026:

"Disability" and "incapacity for performance of duty" as a basis of retirement, mean 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, 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.

25. In *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876, the court interpreted the term "incapacity for performance of duty" as used in Government Code section 20026 (formerly section 21022) to mean "the *substantial* inability of the applicant to perform [her] usual duties." (Italics original.) It is not necessary that the person be able to perform any and all duties since public policy supports employment and utilization of the disabled. (*Schrier v. San Mateo County Employees' Retirement Association* (1983) 142 Cal.App.3d 957, 961.) Instead, the frequency with which the duties she cannot perform are usually performed, as well as the general composition of duties she can perform, must be considered. (*Mansperger v. Public Employees' Retirement System, supra*, 6 Cal.App.3d at pp. 876-877 [while applicant was unable to lift or carry heavy objects due to his disability, "the necessity that a fish and game warden carry a heavy object alone is a remote occurrence"].)

ANALYSIS

26. CalPERS presented two doctors who evaluated respondent and opined she is not substantially disabled from performing her usual job duties based on either her orthopedic or cardiac conditions. When respondent saw Dr. Xeller, she admitted it was not her hand, wrist, and elbow conditions that prevented her from being able to do her job and she told him she believed she could return to work on that basis. Dr. Xeller agreed and found she was capable of performing the duties of a Case Records Technician.

27. Dr. Leonard's exam revealed respondent recently had a "normal" stress (treadmill) test and angiogram. These results showed respondent was capable of

performing her job duties despite her past cardiac conditions. Her additional evidence of "microvascular disease" was nothing more than a conclusory diagnosis.

28. Respondent presented no evidence to the contrary. Her multiple orthopedic surgeries and cardiopulmonary procedures evidenced her difficult medical history. But respondent did not show that at the time of her application, she was permanently disabled from performing her duties. Her application must be denied.

LEGAL CONCLUSION

Respondent failed to establish by a preponderance of the evidence that she is substantially incapacitated from performing the usual duties of a Case Records Technician at Avenal State Prison.

ORDER

Irene Santiago's appeal of CalPERS's denial of her application for disability retirement is DENIED.

DATE: July 28, 2021

Heather M. Rowan
Heather M. Rowan (Jul 28, 2021 09:18 PDT)

HEATHER M. ROWAN

Administrative Law Judge

Office of Administrative Hearings