

**ATTACHMENT A**  
**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:

PAMELA FARRELL-WEBB,

Respondent

and

DEPARTMENT OF DEVELOPMENTAL SERVICES ADMINISTRATION,

Respondent.

Case No. 2010-0090

OAH No. 2012030227

**PROPOSED DECISION**

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on September 20, 2012, in Sacramento, California.

John A. Mikita, Senior Staff Counsel, represented the California Public Employees' Retirement System (CalPERS).

Respondent Pamela Farrell-Webb did not appear and was not otherwise represented.

No one appeared for or on behalf of respondent Department of Developmental Services Administration.

Evidence was received, the record was closed, and the matter was submitted for decision on September 20, 2012.

**SUMMARY**

Respondent applied for disability retirement due to a rheumatologic (fibromyalgia and chronic fatigue) condition. CalPERS denied her application, and she appealed. Respondent failed to appear at hearing, and no one appeared on her behalf. Therefore, no competent

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medical evidence that she has a disability that is of a permanent or extended and uncertain duration as a result of a rheumatologic (fibromyalgia and chronic fatigue) condition was introduced, and her appeal must be denied.

## FACTUAL FINDINGS

1. Ms. Farrell-Webb was employed by the Department of Developmental Services Administration as a Management Services Technician. By virtue of her employment, she is a state miscellaneous member of CalPERS subject to Government Code section 21150. She has the minimum service credit necessary to qualify for retirement.

2. On July 22, 2009, Ms. Farrell-Webb applied for disability retirement based on rheumatological (fibromyalgia and chronic fatigue) and psychological conditions.

3. On January 21, 2010, CalPERS sent Ms. Farrell-Webb correspondence denying her application for disability retirement. CalPERS explained:

All medical evidence submitted was reviewed before a final decision was rendered. Our review included the reports prepared by Janet Eatherton, M.D., Douglas Haselwood, M.D., and Diane Wolfe, M.D. Based on the evidence in those reports [*sic*] it is our determination that your rheumatological (fibromyalgia, chronic fatigue) and psychological conditions are not disabling. As a result, we have concluded that you are not substantially incapacitated from the performance of your job duties as a Management Services Technician with the Department of Developmental Services Administration. Therefore, the application for disability retirement is denied.

3. Ms. Farrell-Webb appealed the denial of her application for disability retirement on January 28, 2010, explaining:

I am requesting an appeal hearing due to the following medical conditions [*sic*]  
Severe widespread pain due to fibromyalgia [*sic*]  
Severe chronic fatigue [*sic*]  
Pain and fatigue exacerbated by continuing to work at job/work station [*sic*]

Sub factors [*sic*] include dizziness, forgetfulness, headaches, lack of sleep, severe depression, stumbling and therefore frequent falling [*sic*]

All medical conditions have been substantiated by my physician and PERS Independent Medical Examiner [sic]

4. On March 16, 2012, Ms. Farrell-Webb withdrew her appeal of the denial of her application based on a psychological condition.

5. CalPERS filed a Statement of Issues seeking to deny respondent's application for disability retirement based on a rheumatological (fibromyalgia and chronic fatigue) condition.

6. On September 10, 2012, Ms. Farrell-Webb notified CalPERS' Legal Department that she was dismissing her appeal in its entirety, but refused to confirm her intention in writing.

7. This matter was called on the date and at the time and location specified in the Notice of Hearing. No one appeared at the hearing for or on behalf of Ms. Farrell-Webb or the Department of Developmental Services Administration, and an evidentiary hearing was conducted as a default proceeding pursuant to Government Code section 11520.

*Independent Medical Evaluation Report of Dr. Haselwood*

8. The sole medical evidence introduced at hearing was the Independent Medical Evaluation Report prepared by Douglas Menzies Haselwood, M.D., the physician to whom CalPERS referred Ms. Farrell-Webb for an independent medical evaluation. Dr. Haselwood is a Diplomate of the American Board of Internal Medicine and the American College of Internal Medicine – Rheumatology. He is a Founding Fellow of the American College of Rheumatology and a member of the American College of Physicians. He has served as a Qualified Medical Examiner in Worker's Compensation matters for the State of California since 1993.

9. Dr. Haselwood prepared his Report based on his review of a job duty statement for the position of Management Services Technician with the Department of Developmental Services Administration and a Physician's Report on Disability dated July 17, 2009, authored by Janet Eatheron, M.D. Dr. Haselwood also personally conducted a thorough rheumatological physical examination of Ms. Farrell-Webb.

10. Dr. Haselwood included the following discussion and summary in his Report:

As documented above, Ms. Farrell-Webb certainly has some legitimate sources of musculoskeletal discomfort to include age-appropriate degenerative and mechanical phenomenon and post-operative changes in the left knee. Unfortunately, the unusually high and incapacitating level of musculoskeletal pain, dysfunction and fatigue and resulting physical impairments perceived by Ms. Farrell-Webb are based, almost entirely, on subjective criteria and self-assertion. On the basis of the

currently available medical record, historical and physical evidence [*sic*] I cannot confirm the diagnoses of the syndrome of fibromyalgia (as determined by the American College of Rheumatology) or the chronic fatigue syndrome (as determined by the Center for Disease Control) with the presumption that such diagnoses could, in any reasonable fashion, provide objective criteria upon which to determine objective pathophysiologic parameters of permanent physical disability from the performance of even sedentary work.

Even allowing for Dr. Eatherton's conclusions regarding the diagnoses of fibromyalgia and chronic fatigue syndrome, the presumption that such diagnoses inherently predispose afflicted individuals to unusually severe and permanent levels of physical incapacity is simply not supported by objectively based criteria. The syndrome of fibromyalgia and chronic fatigue syndrome are predominately subjectively based syndromes that were never intended to be interpreted as objectively defined pathophysiologic entities for which medical-legal issues of disability could be determined with any semblance of objectivity. In this context, determining the "severity" of the syndrome of fibromyalgia in the context of "tender point" counts is notoriously manipulation [*sic*], subjective and misleading. Unfortunately, I am unaware of any objective physical abnormalities or clinical tests to help define the fibromyalgia or chronic fatigue or determine a true level of "severity for any given individual."

Based on the currently available medical records, historical and physical evidence, Ms. Farrell-Webb should currently possess the physical capabilities of performing the substantial and essential physical duties of her sedentary work as a management service technician. There may be legitimate concern that Ms. Farrell-Webb may not have the support and coping mechanisms and psychological stamina to deal with the rigors of benign physical hardship in the context of employment [*sic*] but this would best be deferred to psychiatric opinion.

11. Dr. Haselwood concluded that: 1) there are no specific job duties that Ms. Farrell-Webb is unable to perform due to a physical or mental condition; 2) she is not presently substantially incapacitated from the performance of the usual duties of her position; 3) she cooperated with the physical examination and put forth her best effort, although he found her modest discomfort, guarding, and withdrawal mechanisms during the musculoskeletal portion of the exam to be somewhat inconsistent and non-physiologic; 4) she is mentally able to handle her own financial affairs and enter into legally binding

contracts from a rheumatologic standpoint; and 3) she is competent to endorse checks with the realization of the nature and consequence of such act from a rheumatologic standpoint.

12. Ms. Farrell-Webb introduced no competent medical evidence that she suffers from a disability of a permanent or extended and uncertain duration as a result of a rheumatologic (fibromyalgia and chronic fatigue) condition. No did she introduce any evidence to contradict or impeach the findings and conclusions contained in Dr. Haselwood's Report, and the Report was credible.

## LEGAL CONCLUSIONS

### *Applicable Law*

1. Any CalPERS member who is "incapacitated for the performance of duty shall be retired for disability pursuant to this chapter if he or she is credited with five years of state service, regardless of age . . ." (Gov. Code, § 21150, subd. (a).)

2. "Disability" and "incapacity for the performance of a duty" are defined as a "disability of permanent or extended and uncertain duration, as determined by the board . . . on the basis of competent medical opinion." (Gov. Code, § 20026.)

3. As set forth in Factual Findings 10 through 12, Ms. Farrell-Webb failed to introduce any competent medical evidence that she has a disability that is of a permanent or extended and uncertain duration as a result of a rheumatologic (fibromyalgia and chronic fatigue) condition. Therefore, she failed to meet her burden of proving that she is entitled to be retired for disability based on a rheumatologic (fibromyalgia and chronic fatigue) condition.

## ORDER

Pamela Farrell-Webb's appeal from CalPERS' determination that she is not entitled to be retired for disability is DENIED.

DATED: September 24, 2012

  
COREN D. WONG  
Administrative Law Judge  
Office of Administrative Hearings