

ATTACHMENT A
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:

ANNETTE WEATHINGTON,

Respondent,

and

THE DEPARTMENT OF CORRECTIONS
AND REHABILITATION,
CALIFORNIA INSTITUTION FOR
WOMEN,

Employer.

CASE NO. 2011-0301

OAH NO. 2011120998

(STATEMENT OF ISSUES)

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt,
Administrative Law Judge, Office of Administrative Hearings, in San Bernardino,
California on August 7, 2012.

Annette Weathington (respondent) represented herself.

CalPERS' senior staff counsel Rory J. Coffey, Esq., represented the California
Public Employees' Retirement System (CalPERS).

There was no appearance on behalf of the employer.

Oral and documentary evidence was received and the matter was submitted on
August 7, 2012.

FACTUAL FINDINGS

1. Mary Lynn Fisher made and filed the Statement of Issues while acting

PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED 2011/12/20 2012

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in her official capacity as the Division Chief of the Benefit Services Division of CalPERS.

2. Respondent was employed as a Clinical Social Worker by the California Department of Corrections and Rehabilitation, California Institution for Women. By virtue of this employment respondent is a state safety member of CalPERS.

3. On April 6, 2010, respondent signed and thereafter submitted a completed application for Industrial Disability Retirement. Respondent's application was based on orthopedic (hip, back, lower extremity) conditions.

4. By letter, dated December 10, 2010, CalPERS notified respondent that her application for disability retirement had been denied.

5. By letter, dated January 4, 2011, respondent appealed CalPERS' December 10, 2010, denial of her disability retirement application.

6. Dr. Leslie Kim, M.D., a Fellow, American Academy of Orthopedic Surgery, authored an "Orthopedic Independent Evaluation," dated October 8, 2010. Dr. Kim interviewed respondent, examined respondent and reviewed numerous past medical reports concerning respondent's condition. Dr. Kim concluded that the "inconsistency of symptoms, diagnoses, and disability over time is not well explained. The specific diagnoses [sic] not well established by any verifiable objective findings, except for left trochanteric bursitis and abductor tendinosis on MRI. The reported mechanism of injury on 4/09/08 is atypical for involvement of trochanteric bursitis and there was initially no mention of hip pain." (Exh. 19) Dr. Kim noted that the validity of respondent's symptoms and associated activity restrictions is based on respondent's "credibility." Dr. Kim then noted the following:

. . . the surveillance and investigation by Robert Nagel raises serious questions concerning the veracity of her [respondent's] statements. During this evaluation, the patient [respondent] indicated that she could tolerate sitting, standing, and walking for up to a maximum of approximately 30 minutes, yet she reportedly walked continuously for 2 hours and 10 miles during the 3rd of 3 consecutive days of surveillance. Furthermore, the business background investigation by Mr. Nagel showed the patient [respondent] associated with a business named 'Psychotherapy Plus,' and she was observed at the business address apparently engaging in business activity. This conflicts with her statement made during this evaluation that she has not worked since August of 2009. Absent information or records to the contrary, the

activities observed during the 3 consecutive days of surveillance are presumed to be representative of her usual activities. They do not appear to be compatible with the severity of symptoms and level of disability described by the patient and reported by various examining physicians.

In conclusion, this evaluation does not substantiate the inability of the patient to perform her usual job duties. . . she is not considered incapacitated from the performance of her usual job duties as described in the reviewed job description and physical requirements form. . . . (Exh. 19)

7. Dr. Kim testified during the hearing in conformity with the contents of her report.

8. Respondent testified briefly on her own behalf. In sum, respondent testified that her injuries resulted from several "falls" she had on the prison grounds due to "uneven pavement." According to respondent, she continued to "trip and stumble on the uneven pavement and in the gravel parking lot." Respondent testified that, "I found it difficult to get to work. I had pain at night and got very little sleep. I am unable to function in the morning, I'm very lethargic. I used to be more vibrant." Other than this brief testimony, respondent presented no other evidence in support of her appeal of CalPERS' determination that she is not substantially incapacitated from the performance of her job duties as a Clinical Social Worker with the Department of Corrections Institution For Women.

LEGAL CONCLUSIONS

Applicable Code Sections

1. California Government Code section 20026 provides, in pertinent part: "Disability' and 'incapacity for performance of duty' as a basis of retirement, mean disability of permanent or extended and uncertain duration, as determined . . . on the basis of competent medical opinion."

2. California Government Code section 21156 provides, in pertinent part: "In determining whether a member is eligible to retire for disability, the board or governing body of the contracting agency shall make a determination the basis of competent medical opinion . . ."

3. In the present instance the only competent medical opinion presented during the hearing established that respondent does not have a disability of permanent

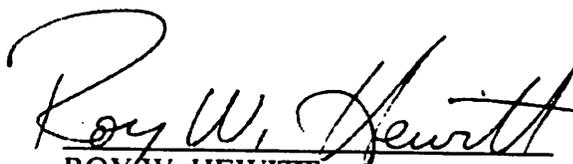
or extended and uncertain duration that prevents her from performing her duties as a Clinical Social Worker with the Department of Corrections Institution For Women, within the meaning of Government Code sections 20026 and 21156.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's appeal is denied.

Dated: October 4, 2012


ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings