

ATTACHMENT A
PROPOSED DECISION

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

In the Matter of the Application for the
Disability Retirement of:

TONIA BEALER,

Applicant/Employee,

and

RIVERSIDE COUNTY SUPERIOR
COURT,

Respondent/Employer.

CalPERS Case No. 2012-0284

OAH No. 2012061109

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 19, 2012, in San Bernardino, California.

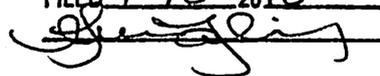
Rory J. Coffey, Senior Staff Counsel, California Public Employees' Retirement System, State of California, represented Petitioner Mary Lynn Fisher, Chief, Benefit Services Division, California Public Employees' Retirement System, State of California.

Jessica Shiffman, Attorney at Law, represented Applicant/Employee Tonia Bealer (now deceased).

No appearance was made by or on behalf of Respondent/Employer Riverside County Superior Court.

On December 19, 2012, the matter was submitted.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED 1-10-2013



ISSUE

Was Tonia Bealer permanently disabled or incapacitated from performing the usual and customary duties of a Courtroom Assistant as a result of mental illness or any other disabling psychiatric condition when she filed her application for disability retirement?

FACTUAL FINDINGS

Preliminary Matters

1. Applicant/Employee Tonia Bealer (Ms. Bealer or Applicant) was employed by Respondent/Employer Riverside County Superior Court as a Courtroom Assistant. By reason of her employment, Ms. Bealer was a state miscellaneous member of the California Public Employees' Retirement System (CalPERS) and was subject to the Government Code.

2. On June 3, 2011, Ms. Bealer signed an Application for Disability Retirement that she filed with CalPERS. In her application, Ms. Bealer claimed the right to a disability retirement on the basis of mental illness. Ms. Bealer last worked for Respondent/Employer Riverside County Superior Court on June 30, 2009.

3. CalPERS obtained records related to Ms. Bealer's employment. Based on information contained in those records, CalPERS concluded that Ms. Bealer's employment with Respondent/Employer Riverside County Superior Court had been terminated for cause and that Ms. Bealer was not entitled to a CalPERS disability retirement.

4. By letter, dated January 6, 2012, CalPERS notified Ms. Bealer of its adverse determination and of her right to appeal.

5. By letter, dated February 3, 2012, Ms. Beale, through her attorney, timely appealed from CalPERS' adverse determination.

6. On June 18, 2012, Complainant Mary Lynn Fisher, CalPERS's Chief, Benefit Services Division, signed the Statement of Issues in her official capacity. The Statement of Issues and other required jurisdictional documents were served thereafter on Ms. Bealer and upon the Riverside County Superior Court.

The matter was set for an administrative hearing.

7. On July 19, 2012, Ms. Bealer died.

8. On December 19, 2012, the record in this administrative proceeding was opened; jurisdictional documents were presented; documentary evidence was produced; closing arguments were waived; the record was closed; and the matter was submitted.

Medical Evidence

9. Neither party offered any medical evidence.

Evaluation

10. No evidence was produced to establish that Tonia Bealer was permanently disabled or incapacitated from performing the usual and customary duties of a Courtroom Assistant as a result of mental illness or any other disabling psychiatric condition when she filed her application for disability retirement. As a result of the Applicant's failure to establish a prima facie case for the granting of a disability retirement, it was not necessary to take evidence in support of the affirmative defense that Ms. Bealer's employment was terminated for cause.

LEGAL CONCLUSIONS

Applicable Statutes

1. Government Code section 20026 provides in part:

"Disability" and "incapacity for performance of duty" as a basis of retirement means disability of permanent or extended and uncertain duration, as determined by the board . . . on the basis of competent medical opinion.
2. Government Code section 21150 provides:

A member incapacitated for the performance of duty shall be retired for disability . . . if he or she is credited with five years of state service, regardless of age.
3. Government Code section 21152 provides in part:

Application to the board for retirement of a member for disability may be made by . . .

[¶] . . . [¶]

(d) The member or any person in his or her behalf.
4. Government Code section 21156 provides in part:

(a)(1) [¶] . . . [¶]

(2) In determining whether a member is eligible to retire for disability, the board or governing body of the contracting agency shall make a determination on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process

Burden and Standard of Proof

5. Absent a statutory presumption, an applicant for a disability retirement has the burden of proving by a preponderance of the evidence that he or she is entitled to it. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

Evidentiary Matters

6. Government Code section 11513, subdivision (d), provides:

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.

Cause Does Not Exist to Grant the Application

7. Cause does not exist to grant Ms. Bealer's application for disability retirement. No competent medical evidence was offered to establish that Ms. Bealer was unable to perform the usual and customary duties of a Courtroom Assistant with the Riverside County Superior Court as the result of mental illness.

ORDER

The application for disability retirement filed by Tonia Bealer with the California Public Employees Retirement System, dated July 3, 2011, is denied.

DATED: January 8, 2013



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings