

ATTACHMENT A
THE PROPOSED DECISION

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

In the Matter of the Application for
Disability Retirement of:

LIZABETH RUIZ,

Respondent,

and

COUNTY OF SANTA CLARA,

Respondent.

Case No. 2012-0148

OAH No. 2012090571

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on December 19, 2012, in San Jose, California.

Senior Staff Counsel Jeanlaurie Ainsworth represented complainant Mary Lynn Fisher, Chief, Benefit Services Division, California Public Employees' Retirement System.

Todd A. Johnson, Attorney at Law, Butts & Johnson, represented respondent Lizabeth Ruiz, who was present.

There was no appearance by or on behalf of respondent County of Santa Clara.

The record closed and the matter was submitted on December 19, 2012.

FACTUAL FINDINGS

1. Respondent Lizabeth Ruiz was employed by the County of Santa Clara as an Eligibility Worker III. By virtue of her employment, respondent was a local miscellaneous member of the California Public Employees' Retirement System (CalPERS). On May 19, 2010, respondent signed and then submitted to CalPERS an application for disability retirement. On the application, respondent described the nature of her disability as "cervical spine – low lumbar problems," "carpal tunnel both hands," and "depression – OCD." She requested an effective date of retirement "upon expiration of benefits." On February 1, 2011,

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM

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CalPERS denied respondent's application. Respondent filed a timely appeal, complainant Mary Lynn Fisher, Chief of CalPERS's Benefit Services Division, issued a statement of issues on July 12, 2012. This hearing followed.

2. When it denied respondent's application, CalPERS relied on the opinion of psychiatrist Denis Alan Clegg, M.D., who concluded in his report dated December 1, 2010, that respondent's psychological condition does not incapacitate her for the performance of duty.

3. At hearing, Dr. Clegg testified that, since writing his December 1, 2010 report, he has been given medical records that have caused him to change his opinion. Dr. Clegg stated that it is now his opinion that respondent is incapacitated for the performance of duty as an Eligibility Worker III, due to her psychological condition.

4. Complainant and respondent stipulated, based upon Dr. Clegg's testimony, that respondent is permanently incapacitated for the performance of duty due to her psychological condition, and that she qualifies for disability retirement. Complainant and respondent further stipulated that it is unnecessary to determine whether respondent is incapacitated for the performance of duty due to her orthopedic conditions.

LEGAL CONCLUSIONS

1. A local miscellaneous member of CalPERS who becomes "incapacitated for the performance of duty" shall be retired. (Gov. Code, § 21150.) The phrase "incapacitated for the performance of duty" is defined by the Public Employees' Retirement Law to mean "disability of permanent or extended and uncertain duration, as determined by the board, . . . on the basis of competent medical opinion." (Gov. Code, § 20026.)

2. Respondent is incapacitated for the performance of duty as an Eligibility Worker III, due to her psychological condition, and her disability is permanent. (Finding 4.)

ORDER

The application of respondent Lizabeth Ruiz for disability retirement is granted.

DATED: December 20, 2012



DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings