

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Statement of Issues Against:

BENJAMIN NAVARRETTE,

and

LONG BEACH UNIFIED SCHOOL
DISTRICT,

Respondents.

Case No. 8950

OAH No. 2012040689

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on November 8, 2012, in Los Angeles. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

John A. Mikita, Senior Staff Counsel, represented Mary Lynn Fisher (Petitioner), Chief, Benefit Services Division, California Public Employees' Retirement System (PERS).

No appearance was made by or on behalf of Benjamin Navarrette (Respondent) or the Long Beach Unified School District (District), despite their receiving adequate notice and an opportunity to contest the Statement of Issues.

FACTUAL FINDINGS

1. Petitioner filed the Statement of Issues in her official capacity.
2. Respondent was employed by the District as a school community worker. By virtue of his employment, Respondent is a local miscellaneous member of PERS subject to Government Code section 21150, and has the minimum service credit necessary to qualify for retirement.

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3. On November 6, 2007, Respondent signed an application for disability retirement, in which he claimed he was disabled on the basis of a psychological condition (depression).

4. PERS obtained medical records concerning Respondent's condition from competent medical providers. In addition, PERS referred Respondent to psychiatrist Stuart Shipko for an independent medical evaluation. Dr. Shipko reviewed the District's job description for Respondent's position, as well as medical records from Respondent's treating health care providers. On or about April 10, 2008, Dr. Shipko performed his evaluation of Respondent. Dr. Shipko concluded that Respondent was not incapacitated from performing his duties as a school community worker and reported the same to PERS.

5. Based on the above, PERS concluded that Respondent was not permanently disabled or incapacitated from performing his duties as a school community worker.

6. By a letter dated May 30, 2008, PERS notified Respondent that his application had been denied.

7. Respondent submitted another disability application on July 22, 2008, which PERS accepted as a timely appeal from the denial of his application for a disability retirement and a request for a hearing.

8. In October of 2012, Dr. Shipko reviewed medical records from Respondent's health care providers generated in 2008 and 2012. Dr. Shipko found those records did not alter his prior opinions expressed to PERS.

9. Respondent presented no evidence.

LEGAL CONCLUSIONS

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

2. The statutory scheme for disability retirement requires a "disability of permanent or extended and uncertain duration, as determined . . . on the basis of competent medical opinion." (Gov. Code, § 20026.) "If the medical examination and other available information show to the satisfaction of the board that the member . . . is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability." (Gov. Code § 21156.)

3. An applicant does not qualify for a disability retirement when he can perform customary duties, even though doing so may sometimes be difficult or painful. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873.)

4. Cause was not established to grant Respondent's application for a disability retirement, in that it was not established that he is permanently disabled or incapacitated from performing his duties as a school community worker. As an applicant for disability retirement benefits, Respondent has the burden of rebutting the evidence presented by Petitioner and of proving that he is permanently incapacitated. He failed to do so. Petitioner submitted a report from Dr. Shipko in which he concluded that Respondent was not incapacitated from performing his job duties. Respondent presented no evidence rebutting the same. Though it might be difficult at times for Respondent to perform his duties, such does not qualify him for a disability retirement. (Factual Findings 1-9.)

ORDER

Respondent Benjamin Navarrette's appeal is denied.

DATED: December 17, 2012



ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings