

**ATTACHMENT A**  
**THE PROPOSED DECISION**

BEFORE THE  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA

In the Matter of the  
Statement of Issues Against:

EUGENE L. BLANCK, Jr.,

Respondent,

and

WATER RESOURCES CONTROL  
BOARD,

Respondent.

Case No. 2010-0359

OAH Case No. 2013010376

**PROPOSED DECISION**

This matter came for hearing before Administrative Law Judge Samuel D. Reyes on March 26 and 27, and September 9 and 10, 2013, in San Luis Obispo, California.

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

Eugene L. Blanck, Jr. (Respondent) represented himself.

Water Resources Control Board (Board or Respondent Board) did not enter an appearance at the hearing.

On December 11, 2008, Respondent filed an application for disability retirement on the basis of his orthopedic (arthritis), internal (sleep apnea and high blood pressure), otolaryngological (mucous membrane dysplasia and toxic exposure), and psychological conditions. The application was denied on March 3, 2010, as Petitioner concluded that the medical evidence did not establish Respondent's disability. Respondent contends that he is disabled by one or more of the cited conditions due to his exposure to toxic chemicals during his employment at Respondent Board.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED December 3 20 2013

*[Signature]*

Oral and documentary evidence was submitted at the hearing. The record was left open for the submission of written closing argument. The parties filed their initial written arguments on October 15, 2013 (Respondent) and October 21, 2013 (Petitioner), which have been marked for identification only as Exhibits RR and 30, respectively. On November 1, 2013, Petitioner filed a reply brief, which has been marked as Exhibit 31, and on November 5, 2013, Respondent filed his reply brief, which has been marked for identification as Exhibit SS.

The matter was submitted for decision on November 5, 2013.

## FACTUAL FINDINGS

### *Parties and Jurisdiction*

1. Petitioner filed the Statement of Issues in her official capacity.
2. Respondent was employed by Respondent Board from September 1987 until December 2008 as a Range D Engineering Geologist. By virtue of his employment, Respondent is a state miscellaneous member of CalPERS.
3. On December 11, 2008, Respondent filed an application for disability retirement with CalPERS. He described his specific disability as follows: "State Doctor (Gong) restrictions from going to petrochemical sites and sites where respirator required, from chemical exposure. Sleep apnea, mucous membrane dysplasia and psoriatic arthritis from chemical exposure. Stress from employer treatment causing high blood pressure and [Irritable Bowel Syndrome], etc." (Exh. 1, at p.2.)

### *Respondent's Employment and Medical History*

4. Respondent's work as an engineering geologist involved visiting, inspecting, and overseeing the cleanup of hazardous waste sites. He spent significant time in the Casmalia site in San Luis Obispo County. Respondent testified without contradiction that he had been exposed to various toxic chemicals during his employment.
5. Respondent testified that as he continued to work around toxic chemicals his health began to deteriorate. Respondent testified that he developed chronic sinus infections and allergies, that he developed joint pain, that he developed abdominal pain, and that he developed steatohepatitis.
6. While employed at the Board, Respondent received yearly medical examinations by a physician contracted by the employer, Robert Gong, M.D. (Gong). On March 8, 2000, Dr. Gong cited Respondent's ongoing workup for liver damage and directed that Respondent have no petroleum distillate exposure until the workup was completed.

7. In an August 3, 2000 note, Gary L. Cushing, M.D., stated that Respondent had chronic hepatitis, that biopsy results indicated marked macrovesicular fatty change and mild fibrosis, and that about ten percent of patients with steatohepatitis develop fibrosis and can go on to develop cirrhosis, liver failure and death. Respondent continues to follow up the condition with Gabriel Garcia, M.D. at Stanford Hospital and Clinics.

8. In May 2002, Respondent filed his first workers' compensation claim regarding the impact of exposure to chemicals on his health. He subsequently filed others. Respondent testified that he was the subject of harassment at work because of the filing of workers' compensation claims, his insistence on upholding safety requirements for working around toxic chemicals, and his filing of other claims, such as a discrimination claim filed with the Department of Fair Housing and Employment.

9. On August 27 and September 23, 2002, Respondent was examined by Ajit S. Arora, M.D., Ph.D. (Arora), in connection with his first workers' compensation claim. The presenting complaints were sleep apnea, allergies and sinusitis, liver enzyme elevation, chronic pain in the upper left quadrant that did not go away, and constipation and diarrhea since gall bladder surgery in 1999. Dr. Arora found no evidence of any chemical-related internal medicine injury, and concluded that Respondent's existing conditions, sleep apnea, allergies, sinusitis, steatohepatitis, history of gall bladder disease, history of kidney stones, history of colonic polyps, marked obesity, and history of gonadal dysfunction, were the result of non-industrial actors. Dr. Arora did not opine regarding whether any of the existing conditions prevented Respondent from discharging his duties as an engineering geologist, but Respondent continued to work for several years after Dr. Arora's examination. Dr. Arora issued two additional reports, on May 2, 2005 and on April 23, 2007, after review of additional records provided in the workers' compensation case, and his opinions did not change.

10. On February 26, 2004, Dr. Gong noted that Respondent's liver tests were normal, but, given Respondent's history of liver disease, Dr. Gong ordered Respondent to continue to avoid any exposure to petroleum distillates, polyaromatic hydrocarbons and any other liver toxic chemicals.

11. In September 2004, Respondent's duties were changed, as recommended by Dr. Gong, to exclude field work, which may bring him into contact with toxic chemicals. His position was characterized as that of a "technical analyst," and the duties were described, in pertinent part as "Under the direct supervision of a Senior Environmental Scientist the employee performs professional engineering geologist duties/work that may be related to all programs of the Board[.] He will work on more difficult and complex issues, gathering, synthesizing data and producing recommendation[s] for Program direction and/or policy creation. This 'technical analyst' position will support Program managers, project managers and other technical staff[.] . ." (Exh. 20, at p.1.) Thus, after Dr. Gong's restrictions and adjustment of duties, Respondent's position became a sedentary one, primarily requiring desk work.

12. In mid 2006, Respondent learned that his personnel file and those of others had been placed in an office computer drive accessible to others in the office. He complained to his union, and was told to make a copy of what was on the drive. His supervisor learned of Respondent's attempt to copy information from the drive and, on August 10, 2006, cancelled Respondent's access to Board computers. As noted below, Respondent's physicians precluded him from returning to work after this incident.

13. David W. Leece, M.D. (Leece) is Respondent's primary care physician. Dr. Leece occasionally signed medical notes for Respondent to be off work, including three in September and October 2005 in which Respondent was precluded from returning to work because of an unstated "acute medical problem." Dr. Leece again restricted Respondent from returning to work in August 2006 because of the stress he was under. On a September 7, 2006, progress note, Dr. Leece notes that Respondent displayed increased anxiety symptoms and reported that he was under a lot of stress at work after being accused of hacking into a work computer. Dr. Leece's plan was for Respondent to follow up with his psychiatrist, David E. Powles, M.D. (Powles).

14. Respondent has been under the care of Dr. Powles since May 2006. In the initial consultation, Respondent reported stress at work because he felt he was being asked to break the law, because he was being harassed, and because he was being exposed to toxic substances. Dr. Powles's examination revealed no serious psychiatric condition, diagnosing Mood Disorder, Not Otherwise Specified, and Psychological Factors Affecting Medical Condition. Dr. Powles started medication treatment and psychotherapy.

15. a. Dr. Powles also directed that Respondent stop working in August 2006. Dr. Powles testified at the hearing that he did so because Respondent perceived his work environment as hostile and Dr. Powles felt that continued exposure to the work environment would aggravate Respondent's condition.

b. Dr. Powles subsequently suggested a change of work environment. In a note to a manager with Respondent Board dated March 2, 2007, Dr. Powles elaborated on his opinion: "The explanation as to why Mr. Blanck is able to work at Cal Poly and not at the Water Board is as follows: Because of the risk of life[-]threatening medical consequences Mr. Blanck is precluded from working in any hostile work environment. His former, usual and customary work for the Water Board is located in a hostile work environment; his work at Cal Poly is not." (Exh. 22.)

c. At the hearing, Dr. Powles agreed that in 2008 Respondent would have been able to work as a geological engineer for another employer, the Department of Transportation.

16. a. John Dobbs, Ph.D. (Dobbs), conducted an Agreed Medical Evaluation in Psychology on April 7, 2008. Respondent provided a history of his chemical exposure, ailing health, and employment difficulties. Dr. Dobbs interviewed Respondent, assessed his mental status, administered psychological tests, and reviewed pertinent records.

b. Dr. Dobbs diagnosed Major Depressive Disorder, Not Otherwise Specified, and Anxiety Disorder, Not Otherwise Specified. The former was manifested by reports of sad mood, diminished pleasure in most activities, significant weight fluctuations, fatigue, diminished self-esteem, and feelings of worthlessness which caused significant impairment in social, occupational and personal functioning. The latter was manifested by excessive worry, difficulty with concentration, irritability and ruminative preoccupations which dominated much of his thinking. Dr. Dobbs rejected diagnoses of Hypochondriasis and Somatization Disorder because he could not determine if Respondent's health concerns were the product of psychogenic influences or the result of genuine medical conditions.

c. With respect to disability, Dr. Dobbs concluded: "There have been no periods of temporary-total disability existing solely on a psychological basis[.] Although Mr. Blanck discontinued working for the Water Resources Control Board, he was, throughout, working for his wife's company and also taught at the local university when he was asked to do so[.] I would, however, consider him to have been temporarily partially disabled from the date he discontinued working in 2006 until March 17, 2008, when I initially met with him for evaluation." (Exh. 26, at p. 17.)

17. On June 16, 2008, Edward J. O'Neill, M.D. (O'Neill) conducted an internal medicine Agreed Medical Evaluation in the pending workers compensation matter. Dr. O'Neill interviewed Respondent, examined him, and performed laboratory tests. In addition, he reviewed and summarized an extensive set of medical reports and other records. Dr. O'Neill stated, "From an internal standpoint, at the present time, the most outstanding feature is the psychological factors, namely, that he is fixated on the real or potential exposures that he has had over the years on his present or future health. This is amplified by the fact that when he was taken off work it was on a psychiatric basis which, by his comment, was emotional stress, which contributed to his physical problems such as irritable bowel problem, hypertension and his psychiatric condition." (Exh. 26, at p. 33.) Dr. O'Neill deferred to an expert in psychiatry for evaluation of this problem. He also concluded that a previously diagnosed steatohepatitis had resolved and that liver tests were normal. He made positive diagnoses regarding irritable bowel syndrome and hypertension as pertinent to the workers compensation arena, but did not opine regarding whether Respondent was precluded from performing his usual duties because of one or both of these conditions.

18. a. Dr. Powles opined that Respondent is presently unable to return to work in any work environment Respondent perceives as stressful. Dr. Powles stated that for some time Respondent has suffered from fatigue, impaired concentration, alternating diarrhea and

constipation, abdominal pain, pain in multiple joints, especially in the right hip and shoulders, and transient subcutaneous hematomas in his upper extremities. Respondent continues to attribute these physical ailments to exposure to chemicals despite the fact that no medical professional has been able to establish such causal link. As Dr. Powles noted, Respondent believes that he will eventually find a practitioner that will provide relief and his pursuit of a medical diagnosis is the focus of Respondent's life and has caused the dissolution of his marriage and has impacted his ability to compete in the open labor market.

b. In Dr. Powles opinion, Respondent suffers from Somatoform Pain Disease, a psychological condition in which a physical cause has not been found for pain that is severe enough to disrupt a person's life. In Dr. Powles's opinion, the nature of Respondent's perceived pain and his continuing insistence that the pain is the result of ailments brought about by chemical exposure, despite the fact that no specific medical link between the exposure and the ailments has been established by medical professionals, meets the criteria for the disorder. In Dr. Powles's opinion, Respondent has become so obsessed with his belief that chemical exposure has led to a myriad of problems that his return to work in any environment deemed stressful or hostile, regardless of its connection to work with chemicals, would exacerbate the pain and the physical manifestations of stress and ultimately lead to Respondent's demise.

19. Respondent has been under the care and treatment of Patricia Schechter, D.O. (Schechter), since November 6, 2012. Employing a holistic approach, Dr. Schechter treats individuals suspected of having suffered from exposures to toxic chemicals. Respondent complained to her about chronic sinusitis, sleep apnea, skin problems, and joint pain. Dr. Schechter determined that Respondent had a weakened autoimmune system. She has not diagnosed the reason(s) for the problem, but has been treating the symptoms. Since December 2012, Dr. Schechter has been treating Respondent with a series of antibiotics, which she rotates at predetermined intervals to enhance their effectiveness. Respondent has been responding to treatment, as his joint pain has decreased. Respondent has to continue on the regimen for additional time before the plan's success can be determined. Dr. Schechter has not seen any description of Respondent's duties at the Board and did not express an opinion regarding his disability.

#### *Evaluations Conducted at CalPERS' Request*

20. At the request of CalPERS, Asha P.S. Sidhu, M.D. (Sidhu), who holds a certification from the American Board of Internal Medicine, examined Respondent on July 6, 2009. Dr. Sidhu obtained pertinent medical history, performed a physical examination, and reviewed medical reports and a job description. Dr. Sidhu agreed that Respondent had hypertension, but did not consider Respondent incapacitated for the performance of his usual duties due to this condition. He noted the reported of mucous membrane dysplasia, but deferred any opinion regarding the disabling nature of this condition to an ear, nose and throat specialist.

21. Donald Carter, M.D. (Carter), who is certified by the American Board of Otolaryngology, examined Respondent on January 15, 2010; regarding the mucous membrane dysplasia issue. Nasal endoscopic examination showed mild inflammation and well-healed post-operative structures. Review of records revealed that Respondent had worked for several years after diagnosis and treatment with a CPAP machine. In Dr. Carter's opinion, these conditions did not prevent Respondent from performing his duties for the Board.

22. a. Brendan V. McAdams, Jr., M.D. (McAdams), who is certified by the American Board of Orthopedic Medicine, conducted an examination of Respondent on July 16, 2009. He obtained pertinent medical history, performed a physical examination, and reviewed medical reports and a job description. Dr. McAdams reviewed x-rays brought by Respondent, and noted slight progression of degenerative arthritis, more noticeable in the right hip.

b. Respondent reported that approximately seven years before he started noticing problems with his right hip that were eventually diagnosed as degenerative arthritic changes and hip replacement was recommended. Respondent also reported pain in his knees and shoulders. He reported toxic exposure at work. Respondent complained of continuing bilateral hip pain, knee pain, and shoulder pain, which, in each case was greater in the right than in the left side.

c. Dr. McAdams described Respondent as a well-oriented, alert and pleasant individual in no apparent distress, who ambulated into the examination room without evidence of discomfort. On physical examination, Respondent stood erect and was able to squat down and up without assistance. He was able to walk on his heels and toes without difficulties. Range of motion of the lumbar spine was full, considering Respondent's weight. In the sitting position, deep tendon reflexes, knee jerks and ankle jerks were equal and active. There was full extension of the knee without evidence of lumbar lurch. There was no effusion in the knees or patellofemoral crepitus of any note. Dr. McAdams found no true medial or lateral joint line pain. He did find, on examination of Respondent in the supine position, range of motion restrictions, particularly when turning to the right.

d. Dr. McAdams diagnosed Respondent with early degenerative arthritic changes of the right hip. However, Dr. McAdams opined that Respondent was not incapacitated for the performance of his duties by reason of an orthopedic condition. In Dr. McAdams's opinion, Respondent was able to perform the physical requirements of his job, as he was able to walk and seat without limitation.

23. a. Thomas Callahan, M.D. (Callahan) also examined Respondent at the request of CalPERS. Dr. Callahan reviewed numerous medical reports before meeting with Respondent on September 30, 2009. In his interview as well as in the reports of others, Respondent complained of a hostile work environment and about retaliation for taking steps to protect himself against toxic-exposure health-related concerns.

b. On examination, Dr. Callahan concluded that respondent was free of psychologically disabling symptoms, including depression and psychoses. Dr. Callahan found Respondent's stream of thought rational, relevant, and coherent. Respondent did reveal obsessive concern about multiple health issues, inserting narratives about his toxic exposure and health problems even when asked to postpone such comments.

c. Dr. Callahan concluded that the most prominent psychiatric diagnosis was that of Obsessive-Compulsive Personality Disorder with Hypochondriacal Features, and derived additional diagnoses of Occupational Problem, Adjustment Disorder with Mixed Anxiety and Depressed Mood, and Partner Relational Problem. Dr. Callahan specifically concluded that Respondent did not qualify for diagnoses of Major Depression, Hypochondriasis or Somatization. In part, Dr. Callahan rejected these diagnoses because Respondent continued to work for approximately six years with the same alleged pain and symptoms. At the hearing, Dr. Callahan testified that he did not receive or read reports documenting the level of pain required for a diagnosis of Somatoform Pain Disorder. Dr. Callahan further noted that Respondent's functioning was significantly improved from that reported to Dr. Dobbs on April 7, 2008. Dr. Callahan opined that, from a psychological perspective, Respondent was able to discharge his usual and customary duties.

#### *Findings Regarding Respondent's Disability*

24. Respondent did not present credible medical evidence to establish that he is unable to perform his usual and customary duties by reason of internal or otolaryngological conditions. While he has been diagnosed with various internal medical conditions, including sleep apnea, hypertension, irritable bowel syndrome, and mucous membrane dysplasia, he presented no expert testimony that any of these conditions singularly or in combination precluded him from performing his duties. On the contrary, the credible medical evidence, in the form of Drs. Sindhu's and Carter's testimony and opinion, as partially corroborated by opinions and records of others who have examined Respondent over the years, established that Respondent is not disabled for the performance of his work duties.

25. With respect to orthopedic conditions, Respondent also failed to present credible medical evidence to support his claim of disability. While Respondent suffers from joint pain, which is being treated by Dr. Schechter, neither Dr. Schechter nor any other physician opined that Respondent was unable to work as an engineering geologist. Rather, Dr. McAdams examined Respondent, reviewed pertinent records, and concluded that Respondent was not disabled. Dr. McAdams's opinion is persuasive and is credited.

26. Respondent testified at length about his exposure to toxic chemicals and about the consequences of such exposure. However, the causal link between the two was not established in Respondent's case by any expert. On the contrary, it is the absence of such causal link that forms the basis of Dr. Powles's opinion regarding present disability. In any event, at

the time he filed his disability retirement application, Respondent's job did not involve any field work and he was no longer subject to any chemical exposure.

27. The evidence is in conflict regarding Respondent's disability by reason of a psychological condition. However, Dr. Callahan's opinion is more persuasive and establishes that Respondent is not disabled for the performance of his duties. Despite his opinion that Respondent was unable to work at the Board at the time he filed his application for disability retirement, Dr. Powles was unable to satisfactorily explain why Respondent had been unable to work in the same allegedly hostile environment for approximately four years before being excused by his doctors. Dr. Powles had not diagnosed Respondent with any major psychological condition in May 2006 and, even when he agreed to keep Respondent from returning to work, DR. Powles did so to prevent aggravation of symptoms. Moreover, even Dr. Powles agreed that Respondent was able to work as an engineering geologist for two other employers after he stopped working at the Board. Dr. Dobbs, who did diagnose Major Depressive Disorder, did not deem Respondent disabled after March 17, 2008, which opinion is corroborative of Dr. Callahan's. Accordingly, the competent medical evidence does not establish that Respondent is disabled for the performance of his usual and customary duties by reason of a psychological condition.

28. The credible medical evidence presented at the hearing did not establish that Respondent is incapacitated for the performance of duty by reason of any orthopedic, internal, otolaryngological, or psychological condition.

### LEGAL CONCLUSIONS

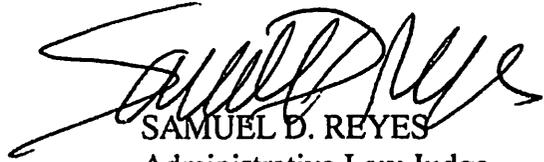
1. Government Code section 20026 defines the following relevant terms: "Disability' and 'incapacity for performance of duty' as a basis of retirement, mean disability of permanent or extended and uncertain duration, as determined by the board . . . on the basis of competent medical opinion." Government code section 21156 provides: "If the medical examination and other available information show to the satisfaction of the board . . . that the member in the state service 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. . . ."

2. Respondent has not established his disability pursuant to the CalPERS retirement law. Government Code section 21156 requires disability to be established by competent medical opinion. However, as set forth in factual finding numbers 4 through 28, the credible medical opinion establishes that Respondent is not disabled for the performance of his usual and customary duties. Accordingly, it was not established that Respondent is disabled for the performance of his duties pursuant to Government Code sections 20026 and 21156.

ORDER

The application for disability retirement of Eugene Louis Blanck is denied.

DATED: 12/2/13



SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings