

**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  
Disability Retirement of:

BARBARA LAND,

Respondent,

and

SIERRA CONSERVATION CENTER,

Respondent.

Case No. 2010-0854

OAH No. 2014030460

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on December 11, 2014, in Sacramento, California.

The California Public Employees' Retirement System (CalPERS) was represented by Renee Salazar, Senior Staff Counsel.

There was no appearance by, or on behalf of, either Barbara Land or the Sierra Conservation Center.

Evidence was received in the form of documents and testimony, the record was closed and the case was submitted for decision on December 11, 2014.

**FACTUAL FINDINGS**

1. Barbara Land (respondent) was employed as an Office Technician by the Sierra Conservation Center. By virtue of her employment, respondent is a state industrial member of CalPERS subject to Government Code section 21150 and 20048.<sup>1</sup> She has the

<sup>1</sup> Government Code section 21150 provides: "Any member incapacitated for the performance of duty shall be retired for disability pursuant to this chapter if he or she is

minimum service credit necessary to qualify for retirement. On October 5, 2009, respondent filed an application for service pending disability retirement with the Benefits Services Division of CalPERS. In filing the application, respondent claimed disability on the basis of orthopedic (bilateral hips, bilateral carpal tunnel, right shoulder, hands, knees and spine) condition.

2. CalPERS obtained or received medical reports concerning respondent's orthopedic conditions from competent medical professionals. After reviewing the reports, CalPERS determined that respondent was not permanently disabled or incapacitated from performance of her duties as an Office Technician at the time her application for disability retirement was filed.

By letter dated September 9, 2010, CalPERS notified respondent of its determination and advised her of her appeal rights. Respondent filed an appeal and request for hearing by letter dated September 22, 2010. CalPERS filed a Statement of Issues on March 5, 2014. Per the Statement of Issues, respondent's appeal is limited to the issue of whether, on the basis of an orthopedic (bilateral hips, bilateral carpal tunnel, right shoulder, hands, knees and spine) conditions, respondent is permanently disabled or incapacitated from performance of her duties as an Office Technician for the Sierra Conservation Center.

3. Compliance with service requirements under Government Code sections 11504 and 11509 was established. CalPERS made attempts to contact and serve respondent at the addresses she has provided to CalPERS on her notice of appeal and on other documents relating to her retirement application. The Notice of Hearing was sent to an address in Arizona provided by respondent. This matter proceeded by way of default under Government Code section 11520.

4. Respondent worked as an Office Technician for Sierra Conservation Center. She did computer and filing work, both pulling and re-filing of files. She reported that the files weighed between one and 45 pounds in weight. Up to 80 percent of her workday involved data entry.

The Duty Statement for respondent's position was considered. Office Technician work is comprised of largely clerical functions. Most of respondent's responsibilities (45 percent) involved scheduling inmates/patients for mental health evaluations with clinical staff, tracking appointments and notifying staff of any changes. She provided medical and central files for clinician appointments. Other clerical functions she performed included typing correspondence and ensuring document access/retrieval, filing, and retention. The

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credited with five years of state service, regardless of age, unless the person has elected to become subject to Section 21076 or Section 21077."

physical requirements of her position were detailed in her job description.<sup>2</sup> Respondent's Office Technician position involved constant reaching in front of her body, fine finger dexterity and hand/wrist movement. It involved frequent sitting. However, there was flexibility on a frequent basis to break sitting with standing and walking. Respondent's work involved occasional standing, walking, lifting, carrying, bending/stooping, pushing/pulling, and kneeling/crawling/crouching. Respondent worked between 9:00 a.m. and 5:00 p.m. Her work environment was within a thermostatically controlled office with linoleum-covered flooring. Her work did not involve travel.

5. On April 7, 2010, respondent was seen for an independent orthopedic medical evaluation by Robert K. Henrichsen, M.D. Dr. Henrichsen is a qualified medical evaluator and Diplomate of the American Board of Orthopaedic Surgery. He is also a fellow of the American Academy of Orthopaedic Surgeons. He prepared an Independent Medical Evaluation (IME) report dated April 7, 2010.

6. Respondent reported to Dr. Henrichsen a history of undergoing a left carpal tunnel release and a trigger finger release on December 28, 2007. On February 14, 2008, she had a right carpal tunnel release, right shoulder surgery and a trigger finger release. She returned to work with limitations on May 15, 2008, and continued to work through May 30, 2008. She reported falling and suffering injury to her hands, feet and knee. Imaging studies of her neck, feet and ankles were negative, but she continued to have a variety of persistent symptoms. Respondent reported having seven surgeries between July 2005 and May 2008.

At the time respondent was seen by Dr. Henrichsen, she reported the following symptoms: 1) grinding sensation in her neck with reduced mobility; 2) reduced mobility and a catching/clicking feeling in her right shoulder, and some catching in her left shoulder with pain and reduced mobility; 3) tendonitis symptoms in her right elbow and pain in her left elbow with reduced mobility in both elbows; 4) prominence in wrist areas with pain present on the dorsum aspects of both wrists; 5) reduced sensation in her palms, as well feeling weakness in her digits; 6) frequent pain in her thoracic and lumbar spine, with sciatic nerve irritation; 7) right and left hip pain associated with inflammation; 8) swelling and pain in her right knee and left knee anteromedial pain with a feeling of giving out; 9) swelling and pain in both ankles; and 10) intermittent swelling of both feet in the hind area and also around the metatarsal head and toe junction area.

7. Dr. Henrichsen reviewed respondent's medical records and reports from a number of medical providers over the period May 30, 2008, through December 29, 2009.

Dr. Henrichsen conducted a comprehensive orthopedic examination. Dr. Henrichsen made the following diagnoses: 1) history of degenerative disc disease, cervical spine; 2) history of previous right shoulder acromioplasty and rotator cuff repair and/or debridement;

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<sup>2</sup> The job description for Office Technician defined on-the-job time spent in physical activities by the following measures: 1) "constantly" (2/3 or more of a workday); 2) "frequently" (1/3 to 2/3 of a workday); and 3) "occasionally" (1/3 or less of a workday).

3) right and left shoulder pain with limited motion; 4) low back pain; 5) thoracic spine pain; 6) history of right and left carpal tunnel release and trigger finger release with no evidence of ongoing carpal tunnel syndrome; 7) history of knee abrasions; 8) history of resolved knee abrasions; 9) history of arthritis both knees; and 10) normal ankle and foot evaluations.

8. Dr. Henrichsen noted that he found no specific areas of any serious disorder following his overall physical examination. He found nothing in the medical records to suggest that her fall in May 2008 resulted in any significant injury. Overall he found that respondent had “a large amount of symptoms and a minimal amount of abnormal findings.” He found no specific abnormal musculoskeletal findings.

9. Dr. Henrichsen reviewed respondent’s job duties and the physical requirements of his position. He found no specific portion of her occupation which she was not able to accomplish. He opined as follows regarding respondent’s ability to perform her duties as an Office Technician:

She is not substantially incapacitated for the performance of her occupational duties based on this evaluation and the records which are presented. Her overall physical examination demonstrates a lot of symptoms with no good evidence of seriously abnormal findings. The specific musculoskeletal examination does not provide evidence of musculoskeletal deficits that create an inability to accomplish the occupational duties which are described in the outline that you have submitted.

10. Dr. Henrichsen was provided additional medical reports and records relating to respondent’s medical conditions and treatment, the most recent medical report dated July 9, 2010. He reviewed and summarized these records in an IME Supplemental Report he prepared, dated August 11, 2010. Dr. Henrichsen opined that his “review of this information does not alter my opinions or conclusions from my evaluation of April 7, 2010.” He further explained: “Ms. Land has a certain degree of wear and tear in her system and has a variety of aches and pains, and it does remain my opinion based on the criteria I was provided by CalPERS that she does not meet the disability qualifications of a substantial incapacity to perform her occupational duties at this time.

11. Respondent has not demonstrated through competent medical evidence that she is permanently disabled or incapacitated from performance of her duties as an Office Technician with the Sierra Conservation Center.

Dr. Henrichsen’s evaluation reports and testimony are persuasive that respondent’s orthopedic (bilateral hips, bilateral carpal tunnel, right shoulder, hands, knees and spine) conditions are not disabling. Respondent’s application for disability retirement should be denied.

## LEGAL CONCLUSIONS

1. Under Government Code section 21150, members incapacitated for the performance of duty shall be retired for disability. Government Code section 20026 provides that “‘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.” In *Mansperger v. Public Employees Retirement System* (1970) 6 Cal.App.3d 873, the court construed the term “incapacitated for the performance of duties” to mean a substantial inability to perform the employee’s usual duties. (*Id.* at p. 876.) The applicant in *Mansperger* was a warden with the Department of Fish and Game whose physician opined that he could no longer perform heavy lifting and carrying. The evidence established that such tasks were an infrequent occurrence, and the applicant’s customary activities were the supervision of hunting and fishing. The *Mansperger* court found that the applicant was not entitled to disability retirement because, although he suffered some physical impairment, he could perform most of his usual job duties.

2. Subsequently, in *Hosford v. Board of Administration of the Public Employees’ Retirement System* (1978) 77 Cal.App.3d 854, the Court of Appeal applied the *Mansperger* test to the disability retirement claim of a California Highway Patrol sergeant who sustained injuries to his back and leg, which restricted his ability to carry out some of the functions of a patrol officer, including driving a patrol car for lengthy periods. Regarding whether there must be actual present disability or whether fear or possibility of future injury is sufficient to find disability, the court noted that “Hosford relied and relies heavily on the fact that his condition increases his chances for further injury . . . this assertion does little more than demonstrate that his claimed disability is only prospective (and speculative), not presently in existence.” The *Hosford* court held that the disability or incapacity must presently exist and that a mere fear of possible future injury which might then cause disability or incapacity was insufficient. (*Id.* at p. 862.)

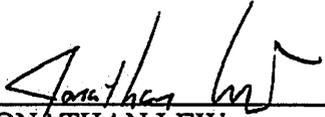
3. Respondent has the burden of proving entitlement to disability retirement. (*Harmon v. Board of Retirement of San Mateo County* (1976) 62 Cal.App.3d 689, 691; *Rau v. Sacramento County Retirement Board* (1966) 247 Cal.App.3d 234, 238.) It is well accepted that CalPERS may rely on decisions affecting other pension plans when the laws are similar, and since Government Code section 31724 (County Employees’ Retirement Law) is similar to Government Code section 21151 (California Public Employees’ Retirement Law), the rule concerning burden of proof shall be applied to cases under CalPERS law. (*Bowman v. Board of Pension Commissioners for the City of Los Angeles* (1984) 155 Cal.App.3d 937, 947.)

4. The matters set forth in Findings 4 through 11 have been considered. It was not established through competent medical evidence that respondent’s orthopedic conditions substantially disabled her from the performance of her usual and regular duties as an Office Technician with the Sierra Conservation Center.

ORDER

The application of Barbara Land for disability retirement is denied.

DATED: December 15, 2014

  
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JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings