

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:

ROMEO B. BALANZA,

Respondent,

and

CALIFORNIA DEPARTMENT OF
TRANSPORTATION - DISTRICT 08,

Respondent.

Case No. 2014-0519

OAH No. 2014100473

PROPOSED DECISION

This matter came on regularly for hearing before Matthew Goldsby, Administrative Law Judge, on January 21, 2015, at the Office of Administrative Hearings in Los Angeles, California.

Christopher C. Phillips, Staff Attorney, appeared and represented the claimant California Public Employees' Retirement System (CalPERS).

Romeo B. Balanza (the respondent) was not present despite his having been properly served with notice of the date, time and location of the hearing.

No appearance was made on behalf of the respondent California Department of Transportation - District 08 (the employer) despite its having been properly served with notice of the date, time and location of the hearing.

Documentary evidence was received. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

FACTUAL FINDINGS

1. On October 10, 2014, CalPERS made and filed the Statement of Issues in its official capacity.

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2. The respondent most recently worked for the employer as a Senior Transportation Planner. Pursuant to Government Code section 21150, the respondent is a state miscellaneous member of CalPERS. In the course of his employment with the employer, the respondent accrued the minimum service credits necessary to qualify for retirement.

3. The respondent is a 72-year-old male. His job duties required frequent sitting for periods of three to six hours and occasional keyboard and mouse use for up to three hours.

4. The respondent complained to the employer about recurring harassment, retaliation and discrimination over the course of seven years. He requested reasonable accommodations, but the employer denied the request.

5. The respondent last worked for the employer on July 8, 2013. He was granted service retirement benefits.

6. On August 8, 2013, the respondent completed and signed an application for disability retirement benefits. On the application, the respondent described his specific disability as follows: "Psyche, spine & Internal." He requested a retirement effective date of July 9, 2013. The respondent filed the application with CalPERS.

7. On February 4, 2014, at CalPERS' request, the respondent underwent an independent medical examination by Lawrence H. Warick, M.D., a diplomate of the American Board of Psychiatry and Neurology and certified in Psychiatry since 1970. CalPERS furnished the independent medical examiner with the respondent's medical records, a description of the respondent's job duties and the physical requirements of his position. CalPERS directed the independent medical examiner to evaluate whether the respondent's condition had rendered him substantially incapacitated for the performance of his usual job duties or performance of the usual duties of the position for other California public agencies in CalPERS and, if so, the anticipated duration of that incapacity.

8. During the evaluation, the independent medical examiner followed his customary practice. He reviewed all relevant records, including a questionnaire completed by the respondent, followed by an in-person examination and interview. The independent medical examiner ascertained that the respondent played tennis three times per week, that he was under financial pressure relating to the acquisition of real property, that he suffered grief from the death of a son in 2013, and that he suffered anxiety from the drug use of another son. In the opinion of the independent medical examiner, the respondent was coping well with his circumstances and had a high level of functioning. The independent medical examiner prepared and issued a written report in which he concluded that the respondent was not substantially incapacitated from performing his job duties.

9. On March 7, 2014, CalPERS denied the respondent's application based on the report of the independent medical examiner and other reports and information marshalled in its review and investigation of the respondent's application.

10. On August 14, 2014, the respondent filed an appeal of the denial of his application. At the hearing on his appeal, the respondent did not appear or present competent medical evidence concerning his spinal or internal conditions.

LEGAL CONCLUSIONS

1. Cause does not exist to sustain the respondent's appeal of CalPERS' determination that the respondent is not substantially incapacitated from his usual duties as a Senior Transportation Planner, pursuant to Government Code sections 20026, 21151, subdivision (a), and 21156. (Findings of Facts, paragraphs 2 through 9.)

2. Government Code section 20026 states:

"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, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion.

3. Government Code section 21150, subdivision (a), states:

A member incapacitated for the performance of duty shall be retired for disability pursuant to this chapter if he or she is credited with five years of state service, regardless of age, unless the person has elected to become subject to Section 21076 or Section 21077.

4. Government Code section 21154 states:

The application shall be made only (a) while the member is in state service, or (b) while the member for whom contributions will be made under Section 20997, is absent on military service, or (c) within four months after the discontinuance of the state service of the member, or while on an approved leave of absence, or (d) while the member is physically or mentally incapacitated to perform duties from the date of discontinuance of state service to the time of application or motion. On receipt of an application for disability retirement of a member, other than a local safety member with the exception of a school safety member, the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for the performance of duty. On receipt of the application with respect to a local safety member other than a school safety member, the board shall request the governing body of the contracting agency employing the member to make the determination.

5. Government Code section 21156 states:

If the medical examination and other available information show to the satisfaction of the board, or in case of a local safety member, other than a school safety member, the governing body of the contracting agency employing the member, 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, unless the member is qualified to be retired for service and applies therefor prior to the effective date of his or her retirement for disability or within 30 days after the member is notified of his or her eligibility for retirement on account of disability, in which event the board shall retire the member for service.

6. When a person seeks to establish that he is entitled to government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.)

7. In this case, competent medical evidence was offered to establish that the respondent was not mentally incapacitated to perform his usual job duties. The only evidence to the contrary was the respondent's opinion of his disability set forth in his application. The opinion of the independent medical examiner holds greater weight than the respondent's lay opinion because of the expert's qualifications and the facts and materials that formed the basis of his opinion. As to the respondent's physical condition, the burden was on the respondent to prove that his spinal and internal conditions rendered him substantially incapacitated to perform his job duties. There was a failure of proof on those issues. Accordingly, the respondent is not disabled under Government Code section 20026 and he is not entitled to disability retirement benefits.

ORDER

The respondent's appeal of the denial of his application for disability retirement benefits is denied.

DATED: January 23, 2015


MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings