

**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:

TINA L. LILES,

Respondent,

and

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES,

Respondent.

Case No. 2014-0353

OAH No. 2014040716

**PROPOSED DECISION**

This matter was heard before Dian M. Vorters, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on January 21, 2015, in Sacramento, California.

Elizabeth Yelland, Senior Staff Counsel, represented the California Public Employees' Retirement System (CalPERS and Complainant).

Tina Liles (respondent), did not appear and was not represented.<sup>1</sup>

There was no appearance by or on behalf of the Department of Motor Vehicles (DMV).

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<sup>1</sup> CalPERS denied respondent's application for disability retirement by letter dated December 13, 2013. CalPERS sent notice of the denial to respondent by certified mail. The notice was received by respondent at the address provided in her application. On January 7, 2014, respondent sent her appeal request to CalPERS by certified mail. On April 30, 2014, CalPERS sent the Statement of Issues, Notice of Hearing, and other required information to respondent. The Notice of Hearing informed respondent that a hearing on her appeal would take place on January 21, 2015, at 9:00 a.m., at OAH Sacramento. Despite proper notice of hearing, respondent did not appear at hearing, and the matter proceeded as a default hearing pursuant to Government Code sections 11509 and 11520.

Evidence was received and the record closed on January 21, 2015.

## ISSUE

Is respondent permanently disabled or substantially incapacitated from performance of her duties as a Motor Vehicle Field Representative (MVFR) for the DMV, on the basis of a psychological (stress, depression, anxiety) condition?

## FACTUAL FINDINGS

### *Respondent's Employment History*

1. Respondent is currently 43 years of age. She began working for DMV in 1999. She retired effective October 3, 2011. Respondent filed her application for disability retirement benefits on October 1, 2012.

### *Duties of a Motor Vehicle Field Representative*

2. As set forth in the Job Specifications, a Motor Vehicle Field Representative serves the public by issuing driver licenses; interpreting provisions of the Vehicle Code, regulations, and DMV policies; registering vehicles and vessels; issuing occupational licenses to vehicle dealers, manufacturers, and dismantlers; performing post licensing services; and utilizing automated systems in the performance of duties.

3. The MVFR is typically located in field offices of the DMV. The incumbent must apply and explain the law to the public; furnish forms and study materials; inspect documents for authenticity and completeness; inspect vehicles for the purpose of properly identifying and describing the vehicle for ownership and registration certificates; ascertain whether applicants are legal residents of California; assess, and collect various vehicle license/registration and other fees/penalties; issue receipts and license plate tabs; type and assist applicants in completing documents; give and correct written examinations; administer vision tests; take photographs and fingerprints; post transactions to daily reports; account for cash, checks, applications, and other accountable items; and interact with other governmental agencies.

4. As set forth in the Physical Requirements of the Position/Occupational Title, an MVFR must have certain minimal physical abilities. An MVFR is expected to "occasionally" (up to three hours) walk, climb, squat, bend/twist at the neck and waist, reach above and below the shoulder, push/pull, and lift/carry up to 10 pounds. An MVFR must "continuously" (from three to six hours) sit and stand. An MVFR must "constantly" (over six hours) perform simple grasping and repetitive hand motions, and use a computer keyboard/mouse. Respondent signed her Physical Requirements form on October 11, 2011, acknowledging that she met these minimum capabilities.

### *Respondent's Disability Retirement Application*

5. On October 1, 2012, respondent filed her Disability Retirement Election Application (Application) with CalPERS. In her application, respondent provided the following information as requested:

- a. *What is your specific disability?* "I lost my mind! Due to my horrible and illegal experience I underwent @ [sic] DMV. I lost a sense of myself & my worth the humiliation, shame, blame, slander, false accusations [sic], stalking, caused me great devastation. I am never going to be the same in any work setting due to what my supervisors did to me and the abuse I took for so LONG! Stomach ulcers, depression, anxiety, back." She indicated that the disability started on June 1, 2008.
- b. *How did the disability occur?* "On or around June of 2008 upon returning to work from pregnancy disability leave, I was verbally and physically harassed by my supervisors. This led to my filing a claim with EEOC in November 2009."
- c. *What are your limitations/preclusions due to your injury or illness?* "I am permanently unable to take orders from A BOSS that's a "BLEEP" ever Again! Due to my injury I suffered @ [sic] DMV starting in June of 2008. I have lost my car in a repossession, been evicted, lost my job, health benefits, etc. And [sic] on welfare!"
- d. *How has your injury/illness affected your ability to perform your job?* Respondent stated that she "Can't perform on job" and was not working in any capacity.
- e. *Other information you would like to provide?* "I love and care for my kids and because DMV has a problem with single parent families, I am unemployed...Now I have NO health insurance."

6. By letter dated December 13, 2013, the Benefit Services Division of CalPERS notified respondent that, based upon the medical reports they had received, they had determined that respondent was not substantially incapacitated from performing her duties as a MVFR with DMV on the basis of her stated physical or psychological conditions. CalPERS reviewed medical records prepared by Allan Hedberg, Ph.D., Thomas Callahan, M.D., and Andrea Bates, M.D. The letter notified respondent of her alternatives and appeal rights. Respondent timely requested an administrative appeal of CalPERS' decision.

### *Andrea R. Bates, M.D. - Psychiatric Independent Medical Evaluation*

7. CalPERS referred respondent to Andrea Bates, M.D., M.B.A., for a Psychiatric Independent Medical Examination (PIME) based on respondent's complaints of

stress, anxiety, and occupational depression. Dr. Bates is certified by the American Board of Psychiatry and Neurology. She maintains her clinical practice as a psychiatric hospitalist at Traditions Behavioral Health, Napa. She is also a professor of psychiatry at the University of California, Davis. She performs medical-legal evaluations in worker's compensation cases, disability evaluations, and general liability matters. On September 23, 2013, Dr. Bates interviewed respondent, performed a mental status examination, and reviewed relevant records including respondent's application for disability, duty statement, job analysis, and medical records. Dr. Bates prepared a PIME report to CalPERS, dated October 5, 2013, and testified at hearing.

8. Respondent began working for DMV in 1999. She stated that she "worked on a computer all day" while helping people with their driver licenses and vehicle registrations. In 2004, there was an incident in which she was "shamed" by a supervisor. Over time, the problem worsened, and she experienced harassment, violence, and gossip. There was apparently conflict with her supervisor and job stress associated with leaves of absence due to her pregnancy in 2007, family deaths, personal illness/depression, and other family considerations. In addition to depression, respondent reported back aches, headaches, and inability to sleep while working at DMV. She stated that at time she could not get out of bed and had suicidal thoughts.

9. At the time of the PIME, respondent was suffering from migraine headaches and insomnia. She was not interested in looking for work. She stated, "I could care the least bit about being an asset for anyone, except my kids." As of September 2013, respondent had a 19-year-old son and a five-year-old daughter. She was experiencing financial problems and was angry with the State over the disability process. Respondent had gained 50 pounds during her unemployment and stated, "I gave up and don't try."

10. In addition to disability retirement, respondent filed a workplace harassment claim with the Equal Employment Opportunity Commission (EEOC). Prior to the PIME, she received notice from EEOC stating that they did not find cause for her claim. Respondent's statements to Dr. Bates alternated between frustration at a lack of resolution of her disability case and resignation. She stated her focus was on her children, that she was in "survival mode," and that her family was "functioning." She shared that she was "less patient" with people. She had "no family or friends" left which she blamed on years of stress and joblessness. Respondent was previously prescribed Zoloft, Paxil, and Effexor. She stopped taking anti-depressants after she left her job. She did not believe she needed medication since her symptoms occurred at work. She has never been hospitalized for psychiatric treatment.

11. Dr. Bates performed a mental status examination on respondent and documented her findings in her PIME report. Dr. Bates described respondent's mood as "friendly, polite, not very disclosing, guarded, vague." During the examination, respondent demonstrated a wide range of expression with laughter and minor tearfulness. Her overall mood was "euthymic." She was "a little paranoid" but not to a psychotic degree or manner. Dr. Bates identified no psychosis, auditory or visual hallucinations, or delusions.

12. *Diagnosis.* Dr. Bates provided the following diagnosis: Axis I: History of Depressive Disorder NOS, rule out Dysthymic Disorder, Axis II: Deferred, Axis III: History of headaches, backache, asthma, Axis IV: Occupational Stressors, and Axis V: 72. Dr. Bates additionally stated:

Respondent presented with an inconsistent pattern. I would not be surprised if she had a personality disorder, but I do not have enough evidence to give that diagnosis. The member may have had troubles with performing her employment in the past, but her current symptoms are lacking.

13. In response to CalPERS' specific questions about respondent's psychological condition, Dr. Bates testified to and opined the following in her report:

- a. *Are there specific duties member is unable to perform?* I have found that the member would be able to complete her duties.
- b. *Is member substantially incapacitated for performance of her usual duties?* I found that the member was not substantially incapacitated for performance of usual duties at the time of my evaluation. I have found this because any impairment was not to the degree that the member had a substantial inability to perform the usual and customary duties of the position. That is, there was not a substantial incapacity due to a psychiatric condition of a permanent or extended or of uncertain duration.
- c. *If incapacitated, is the incapacity permanent or temporary?* At the time of my evaluation I did not find the member incapacitated.
- d. *Did member cooperate with examination or did you detect exaggeration?* Respondent put forth a "reasonable, but not best effort." While exaggeration cannot be ruled out, I think that examinee was putting forth effort and that overall the examination was valid.

#### *Assessment of Respondent's Disability*

14. Respondent is a state miscellaneous member in CalPERS. She was 40 years of age when she filed her Application. She is currently 43. Respondent did not appear at hearing to offer additional evidence. Her claimed disability at the time she filed her Application was based on workplace stress, depression, and anxiety. She felt that her work environment was hostile due to the actions of her supervisor and some co-workers. Her EEOC claim was subsequently denied. In the opinion of the PIME physician, Dr. Bates, respondent is not substantially impaired for performance of her duties as a MVFR. This evidence was uncontroverted.

15. After consideration of the medical record, CalPERS determined that respondent was not substantially incapacitated on the basis of a psychological condition of depression, anxiety, and stress. There is expert opinion evidence that respondent is not substantially incapacitated for performing her usual duties as an MVFR at the DMV. Respondent did not submit competent medical evidence of impairment to contravene the opinions of Dr. Bates. As such, respondent did not meet her burden of proof and her claim must be denied.

## LEGAL CONCLUSIONS

1. By reason of her employment, respondent is a state miscellaneous member of CalPERS and eligible for disability retirement under Government Code section 21150, subdivision (a).

2. To qualify for disability retirement, respondent must prove that, at the time she applied for disability retirement, she was “incapacitated physically or mentally for the performance of ... her duties and is eligible to retire for disability...” (Gov. Code, § 21156, subd. (a)(1).) As defined in Government Code section 20026,

“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.

3. The burden is on respondent to present competent medical evidence to show that, as of the date she applied for disability retirement, she was substantially unable to perform the usual duties of a field representative for the DMV. (*Harmon v. Bd. of Retirement of San Mateo County* (1976) 62 Cal.App.3d 689, 691.)

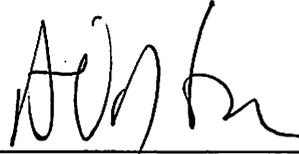
4. Respondent failed to make an adequate showing of substantial disability. She has a history of depression; however, according to Dr. Bates, respondent’s symptoms at the time she filed her Application were not to the level of disability retirement. Respondent is not currently receiving treatment for depression or anxiety and has stopped taking anti-depressants. Respondent’s decision to leave work was precipitated by a conflict with her supervisor. She did not appear at hearing to offer additional information. Overall, there is insufficient evidence that respondent’s mental health issues would prevent her from resuming her customary duties as an MVFT.

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**ORDER**

The application of respondent Tina Liles for disability retirement is DENIED.

DATED: March 3, 2015

A handwritten signature in black ink, appearing to read "Dian M. Vorters", written over a horizontal line.

**DIAN M. VORTERS**  
Administrative Law Judge  
Office of Administrative Hearings