

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

BEFORE THE  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Of:

YVETTE I. ESTRIDGE,

Respondent,

and

STATE COMPENSATION INSURANCE  
FUND,

Respondent.

Case No. 2014-0264

OAH No. 2014090748

**PROPOSED DECISION**

This matter came before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Oxnard, California, on February 5, 2015.

Christopher Phillips, Staff Attorney, represented Complainant Anthony Suine, Chief, Benefit Services Division, Board of Administration, California Public Employees' Retirement System (CalPERS).

Yvette I. Estridge (Respondent) represented herself.

Respondent State Compensation Insurance Fund (SCIF) did not appear at the hearing.

Complainant seeks to deny Respondent's disability retirement application on grounds that the medical evidence does not support her claim of disability based on her orthopedic (back) condition. Respondent asserts that she is disabled for the performance of her duties.

Oral and documentary evidence and argument were received at the hearing and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. Complainant filed the Statement of Issues in his official capacity.

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2. Respondent worked as a program technician for Respondent SCIF from November 1, 1983, until August 3, 2012, a position she held at the time she filed her application for disability retirement. By virtue of her employment, Respondent is a state miscellaneous member of CalPERS.

3. As a program technician, Respondent was responsible for providing claims support by performing clerical functions, including keying data entries, typing, copying, and filing. Her job required prolonged sitting and computer data entry. Her duties were performed in an office in SCIF's Oxnard Regional Office, and her duties did not include driving.

4. On May 4, 2012, Respondent filed an application for service retirement pending a disability retirement determination. She described her specific disability and the manner of its occurrence as follows: "Back and Legs due to [caring] for my husband in 2003[.] L-3, L-4, L-5, S-1 [were] injured. Also have infection in my legs." (Exh. 1, at p. 2.) Respondent retired for service effective August 4, 2012, and has been receiving her retirement allowance since that date.

5. Respondent was the sole care provider for her bedridden husband from December 1999 until 2003. She did a lot of moving and lifting of her husband. Starting in 2000 or 2001, she experienced bladder incontinence, back pain, and numbness in her legs. Respondent was able to place her husband in a nursing home in 2003, and was no longer primarily responsible for his care. She was off work for approximately nine months in 2003 while receiving treatment, which included physical therapy. In 2011, Respondent was diagnosed with colon cancer, and was off work for about one year while she received treatment. During this year, Respondent's back pain decreased as she was able to rest as needed. She returned to work on a part-time basis in February 2012.

6. In July 2012, the Oxnard office was closed, and Respondent was required to drive to the new office in Los Angeles. Respondent was unable to commute to the new job location from her home in Oxnard because she experienced aggravated back pain and numbness in her legs after driving for approximately one hour.

7. Respondent received care for her orthopedic condition from Albert Kam, M.D. (Kam). In a form entitled "Physician's Report on Disability" dated April 25, 2012, Dr. Kam described his diagnosis for Respondent as chronic low back pain and sciatica. Dr. Kam wrote in the form that Respondent was unable to drive one-and-one-half hours to work due to her chronic low back condition. In another Physician's Report on Disability submitted in October 2012, Dr. Kam provided the following examination findings: "[Right] lateral epicondylitis, residual edema [and] tenderness, back pain, leg numbness." (Exh. 13, at p. 1.) In support of his opinion that Respondent was substantially incapacitated for the performance of her duties, Dr. Kam wrote: "Patient has chronic lumbar radiculopathy [with] symptoms in [the] right leg[.] [L]ong commutes would exacerbate her lumbar radiculopathy [and] would limit her drive to work." (Exh 13, at p. 2.)

8. a. On June 3, 2013, Alan M. Gross, M.D. (Gross), an orthopedic surgeon contracted by CalPERS, conducted an evaluation to ascertain whether Respondent was disabled by reason of her orthopedic conditions involving her legs and back. Dr. Gross obtained pertinent medical and other history, examined Respondent, and reviewed pertinent medical records.

b. Respondent complained of low back pain, with radiation into both legs, swelling, numbness and tingling in the lower extremities. Dr. Gross performed a physical examination, which he deemed essentially normal. All range of motion, motor, and sensory gradation tests were normal, and Respondent did not complain of pain on light palpation.

c. Dr. Gross described Respondent's reported complaints of numbness and pain in both legs as in a nondermatomal pattern, or one not consonant with the complained of back injury. His diagnoses were lumbosacral degenerative disc disease with multidermatomal, nonanatomic pain pattern and diabetes mellitus with neuropathy.

d. With specific reference to the CalPERS criteria for disability, Dr. Gross concluded that Respondent was not incapacitated for the performance of her usual duties. Some of the numbness and leg pain may be the result of uncontrolled diabetes, and not orthopedic in nature. In his opinion, the physical findings were essentially normal and there were no specific duties of the program technician position that Respondent could not perform. Even if she could not drive for prolonged periods of time, driving was not one of the duties of the position.

9. The credible medical evidence and opinion establishes that Respondent is not incapacitated for the performance of duty by reason of an orthopedic condition. Dr. Gross presented the only direct medical opinion and evidence of Respondent's condition, and was the only examiner who testified at the hearing. His testimony is sufficient to establish that Respondent is not disabled. Dr. Kam did not testify, and his report is insufficient to establish that Respondent cannot perform the duties of her position. At best, Dr. Kam is of the opinion that Respondent cannot drive for one hour-and-one-half, which is not a requirement of being a program technician at SCIF.

## 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."

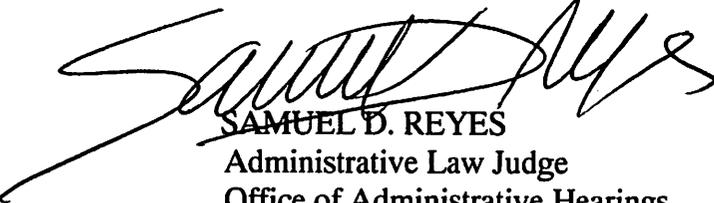
2. Government Code section 21156 provides, in pertinent part: "If the medical examination and other available information show to the satisfaction of the board . . . that the member in the state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability. . . ."

3. By reason of factual finding numbers 3 through 9, Respondent has not established that she is incapacitated for the performance of duty within the meaning of Government Code sections 20026 and 21156. On the contrary, the competent medical evidence received at the hearing shows that she is not disabled by reason of an orthopedic condition related to her lower back or legs. The only activity she is arguably unable to perform, driving from Oxnard to Los Angeles, is not part of her duties and cannot form the basis of a disability retirement claim.

ORDER

The application for disability retirement of Yvette Estridge is denied.

DATED: 3/2/15

  
SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings