

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Of:

JO TENNER,

Respondent,

and

CITY OF COMPTON,

Respondent.

Case No. 2012-0700

OAH No. 2014070409

PROPOSED DECISION

This matter came before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on March 3, 2015.

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

Jo Tenner (Respondent) represented herself.

Respondent City of Compton (Respondent Compton) 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, internal, or psychological conditions. Respondent asserts that she is disabled for the performance of her duties.

Oral and documentary evidence and argument were received at the hearing. The record was left open for Respondent to submit the deposition testimony of an Agreed Medical Examiner in her workers' compensation matter, Robert F. Meth, M.D. (Meth). On March 18, 2015, Respondent submitted a letter and several documents, including some duplicates, which have been marked as Exhibit F. Respondent stated that she could not afford to purchase the deposition transcript, and asked for consideration of six described items. The documents were not self-authenticating. Most purported to be from Respondent Compton, and one, purportedly from the National Resources Defense Council, addressed issues regarding asbestos exposure.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

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On March 19, 2015, Complainant objected to the receipt of Exhibit F as untimely, nonresponsive, and irrelevant.

Complainant's objections are sustained and Exhibit F is not received in evidence. Respondent was given permission to submit the deposition of Dr. Meth, not the documents that were in fact submitted. The documents submitted do not specifically pertain to Respondent's medical or psychological condition, have not been authenticated, and are irrelevant.

The matter was submitted for decision on March 19, 2015.

FACTUAL FINDINGS

1. Complainant filed the Statement of Issues in his official capacity.
2. Respondent worked as a case manager for Respondent Compton. She started her employment in 1992, and her last day of work was in April 2010. By virtue of her employment, Respondent is a local miscellaneous member of CalPERS.
3. As a case manager, Respondent performed case management and job development for participants in the Career Link Program, a youth employment program, including outreach and recruitment, life skills instruction, and data management and reporting. She was required to walk, kneel, squat, bend her neck, bend her waist, reach above and below the shoulder, and lift and carry up to 25 pounds. She frequently used a computer keyboard and mouse, and was frequently required to drive.
4.
 - a. On April 22, 2011, Respondent filed a Disability Retirement Election Application (Application).
 - b. A Physician's Report on Disability signed by May San Wong, M.D. (Wong), submitted in support of the Application contains diagnoses of Fibromyalgia, Osteoarthritis, Degeneration of lumbar intervertebral disc, and Hypertension. In the "Examination Findings" section of the document, Dr. Wong reports "Chronic pain throughout body; severe pain in knees/legs/left shoulder/back. Worsening pain in upper back, bilateral shoulders, knee joints." (Exh. 16, at p. 1.) In Dr. Wong's opinion, Respondent was disabled for the performance of her duties because she could not sit more than 10 minutes per hour, she could not stand more than five minutes per hour, and she could not lift more than ten pounds.
 - c. Respondent also submitted a Physician's Report on Disability from Virginia Chan, M.D. (Chan), a rheumatologist. Like Dr. Wong, Dr. Chan is employed by Kaiser Permanente Medical Group. Dr. Chan repeated the Fibromyalgia, Osteoarthritis, and Degeneration of lumbar intervertebral disc diagnoses, and wrote similar examination finding notes. Dr. Chan also concluded that Respondent was substantially incapacitated from the performance of the usual duties for her current employer, but did not provide an explanation for her opinion.

5. a. On April 2, 2012, at the request of CalPERS, Peter S. Borden, M.D. (Borden), performed an orthopedic examination of Respondent. Respondent's presenting complaints were bilateral hand pain, arm pain, knee pain, leg pain, shoulder pain, back pain, hip pain, and foot pain with constant headaches. Dr. Borden reviewed medical records that indicated Respondent had received treatment in 2003 for sprains/strains to her lower back and to her neck, and that a request was made in May 2003 for carpal tunnel release surgery.

b. The physical examination revealed full range of motion of the neck, shoulder, and elbows, with complaints of pain at the extremes of the ranges. She complained of tenderness on palpation of neck muscles and lower back. In Dr. Borden's opinion, Respondent's subjective complaints outweighed the objective findings.

c. Dr. Borden did not derive any orthopedic diagnoses for Respondent, and was of the opinion that Respondent was not disabled for the performance of the usual duties of her position.

6. a. On April 18, 2012, Anitha T. Mitchell, M.D. (Mitchell), conducted an internal medicine evaluation at the request of CalPERS to ascertain whether Respondent was disabled for the performance of her duties. Dr. Mitchell obtained pertinent medical and other history, examined Respondent, and reviewed her medical records.

b. Respondent complained of diffuse body pain, knee pain and shoulder pain. Respondent reported that starting in 1996 she suffered frequent upper respiratory infections and bronchitis. At that time, there were tanks in her worksite that were being cleaned and fumes were released constantly. Respondent also reported the gradual onset of chronic back pain. She underwent carpal tunnel release surgery in 2007. Respondent also reported diagnoses of arthritis and hypertension.

c. The physical examination yielded essentially normal findings. Respondent was five- feet, two-inches tall, and weighed 228 pounds. Her blood pressure was 118/60, and Respondent was not taking any medication to control her blood pressure. Dr. Mitchell did not note tenderness or swelling in the extremities. Dr. Mitchell was not able to verify the presence of Fibromyalgia on examination.

d. Dr. Mitchell derived the following diagnoses: history of hypertension; non-insulin dependent diabetes mellitus, by history; exogenous obesity; and possible degenerative joint disease. In Dr. Mitchell's opinion, there is no specific duty that Respondent could not perform because of any internal medical condition.

7. a. Psychiatrist Nathan E. Lavid, M.D. (Lavid), examined Respondent on May 21, 2012, at the request of CalPERS. Respondent complained of depression, which she attributed to her worsening physical problems of fibromyalgia and osteoarthritis. Respondent believed the physical problems are rooted in chemical exposure at work, and had filed a workers' compensation claim. Respondent also reported to Dr. Lavid that the filing of the claim brought added stress at work and contributed to her depression.

b. Respondent described her treatment to Dr. Lavin. Her primary care physician, Dr. Wong, prescribes Prozac, an antidepressant, which helps. She visited a psychiatrist in 2009, and has undergone some psychotherapy with Vera David, Ph.D.

c. Dr. Lavid conducted a mental health examination and reviewed pertinent records. Respondent was described as well dressed, reasonably groomed, and cooperative. Her speech was of normal rate, rhythm and volume. She was alert and oriented to person, place and time. When asked about her mood, Respondent replied that she felt "displaced." (Exh. 11, at p. 9.) She denied suicidal or homicidal thoughts. She denied feelings of hopelessness or worthlessness. She did report some sadness, and stress at her job. Respondent felt frustrated because of her physical problems, and reported difficulty concentrating, problems with memory, and anxiety. She denied any symptoms of psychosis, mania, or Obsessive Compulsive Disorder. She denied symptoms of Eating Disorder. Respondent's thought processes were goal directed. Respondent was able to display good immediate recall with three items, and recall of two of the three items after five minutes.

d. Dr. Lavid's differential diagnosis is Mood Disorder Due to a Complaint of Multiple Physical Problems, With Depressive Features, in Partial Remission, versus Depressive Disorder, Not Otherwise Specified, in Partial Remission.

e. Dr. Lavid opined that Respondent is not disabled for the performance of her duties due to any psychiatric condition. In his opinion, Respondent did not present with any symptoms of major mental illness that would impair her ability to function in the workplace. She has no significant severe symptoms of depression, is responding well to treatment, and has no complaints that affect her ability to work.

8. The credible medical evidence and opinion establishes that Respondent is not incapacitated for the performance of duty by reason of any orthopedic, internal medicine or psychiatric condition. As set forth in factual finding numbers 5 through 7, the medical professionals who examined Respondent after the filing of the Application unanimously concluded, with respect to their respective specialties, that Respondent was able to perform the duties of her position. Respondent did not present any witnesses, and the medical evidence she presented from Drs. Chan and Wong was conclusory and these physicians' opinions that Respondent was disabled was inadequately supported. Neither Dr. Chan nor Dr. Wong explained the basis for their opinions or provide supporting analysis or documentation. Therefore, the opinions of Drs. Borden, Lavid and Mitchell are persuasive and establish that Respondent is not incapacitated for the performance of her usual duties for Respondent Compton.

9. CalPERS denied the application on June 26, 2012, and Respondent filed an appeal on July 28, 2012. Complainant issued the Statement of Issues on July 9, 2014, and a Notice of Hearing on February 4, 2015.

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 2 through 8, 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 incapacitated physically or mentally for the performance of her duties by reason of any orthopedic, internal medicine or psychiatric condition.

ORDER

The application for disability retirement of Jo Tenner is denied.

DATED: 4.6.5.6.5


SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings