

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

BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Application for Disability Retirement of:

TANYA E. DONLEY,

Respondent,

and

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. 2013-0541

OAH No. 2014080077

**PROPOSED DECISION**

The hearing in the above-captioned matter took place on May 4, 2015, at Glendale, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, presided. Complainant was represented by Jeanlaurie Ainsworth, Senior Staff Counsel, California Public Employees' Retirement System (PERS). Respondent Tanya E. Donley appeared and represented herself. There was no appearance by the Los Angeles Unified School District (District).

Evidence was received, the case was argued, and the matter submitted for decision on the hearing date. The Administrative Law Judge (ALJ) hereby makes the following Proposed Decision.

STATEMENT OF THE CASE AND ISSUE PRESENTED

Respondent Tonya E. Donley seeks disability retirement form PERS.<sup>1</sup> Respondent was employed as an office technician for 23 years by the District, assigned to various school sites. In August 2012, Respondent submitted a disability retirement application

<sup>1</sup> Because Donley is the only Respondent who appeared in the case, all references to Respondent will be to her unless otherwise noted.

(Application) to PERS. The application referenced several medical conditions. After reviewing medical evidence and having a doctor examine the Respondent, PERS denied the application. Respondent then requested a hearing. In this case, PERS would limit the appeal to whether an internal condition, diabetes and hypertension, cause Respondent to be permanently substantially incapacitated from the performance of her customary duties.

## FACTUAL FINDINGS

### *The Parties and Jurisdiction:*

1. Complainant Anthony Suine filed the Statement of Issues in the above-captioned matter while acting in his official capacity as Chief of the Benefits Services Division of PERS.

2. Respondent was previously employed by the District as an office technician. She is a local miscellaneous member of PERS, and therefore subject to the provisions of Government Code section 21150.<sup>2</sup> She has sufficient service credit to qualify for retirement.

3. On August 22, 2012, Respondent's Application was received by PERS. The Application listed her effective retirement date as December 1, 2012.

4. The application stated that Respondent's disability was "diabetic leg ulcers hypertension." (Ex. 3, p. 1.) She stated the disability began in January 2012, and occurred due to "uncontrolled mellitus type 2 [diabetes]" and "uncontrolled hypertension." (*Id.*) Her stated limitation was that she couldn't walk.

5. (A) Thereafter, on May 10, 2013, PERS wrote to Respondent, denying the disability retirement application. It was asserted that after reviewing medical evidence, including evidence obtained from an Independent Medical Exam (IME), PERS had determined that her internal (diabetes and hypertension) conditions were not disabling, and therefore grounds for disability retirement had not been established. The letter set out various alternatives Respondent might pursue, including an appeal of the PERS denial of disability retirement.

6. Respondent requested an appeal and this proceeding ensued. All jurisdictional requirements have been satisfied.

### *Respondent's Usual Duties as an Office Technician*

7. A written description of the duties of an LAUSD office technician was obtained by PERS from the LAUSD; it is found at exhibit 11. The general definition

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<sup>2</sup> All statutory references shall be to the Government Code unless otherwise noted.

provides that an office technician performs a variety of clerical duties of a routine and recurring nature. This includes, but is by no means limited to, preparation of letters, memos, and reports; interpretation and coding of data for compilation; review of forms and records for accuracy; file maintenance; receipt and response to phone calls. The written description also covers 16 tasks that an office technician may have to perform to support the provision of special education services. This includes maintenance of important documents, such as Individual Education Plans; setting up and documenting meetings; responding to records requests; and, facilitating assessments.

8. Respondent described her job during the hearing. One of her tasks, essentially year round, was enrolling students, which includes obtaining documents, and verifying information provided in the enrollment process. She and the other office technicians had to manage all sorts of supplies, from textbooks to art supplies, which had to be logged, distributed, and brought back from various classrooms and offices around her school site. Since there was no school nurse, she and other office technicians dealt with sick kids at times.

9. Respondent's job entailed much walking and time on her feet. She might have to walk all over the school site to deliver supplies, or to drop off documents regarding meetings. Her description of the amount of walking was consistent with that set out in the written job description, in that her job could require walking or standing from three to six hours per day. (Ex. 10, p. 1.) Likewise, there were times that Respondent had to visit classrooms on an almost hourly basis to track attendance, again creating problems because she was walking so much.

### *The IME*

10. On January 4, 2013, Soheila Benrazavi, M.D., conducted an IME of Respondent for PERS. She issued a written report on January 15, 2013. As part of her exam process, Dr. Benrazavi reviewed several medical reports generated by other medical professionals who had treated Respondent.<sup>3</sup>

11. On July 4, 2011, Respondent had cut her lower left leg. It became infected and ulcerous. By December 2011, the problem had not resolved itself, and Respondent was placed on IV antibiotics. She had been having pains in her legs during 2011, and she began to have burning sensations in both of them. (Ex. 10, p. 3.) By the time of the IME, the wound on her leg had healed, leaving some scarring in place, but it had not closed until about two weeks before the IME.

12. According to the IME report, Respondent reported that when she walked, it felt like there is "grass" in her feet, and burning when she puts her foot on the ground. At the

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<sup>3</sup> It is not clear whether she reviewed the medical records before or after her examination of Respondent, but the information she gleaned from them figured in her report to PERS.

hearing, Respondent made clear that she had stated it felt like “glass,” not grass. Dr. Benrazavi acknowledged a simple misunderstanding of Respondent’s description of the symptom at the time of the IME.

13. Dr. Benrazavi reported that sensation was “diminished in bilateral lower extremity up to the knees with a type of sensitivity in the feet to light touch and [that sensation was] also diminished in the upper extremity to above the wrist level. (Ex. 10, p. 7.) At the hearing Dr. Benrazavi stated that Respondent suffers from peripheral neuropathy in both extremities, describing it as “moderately advanced,” but not severe. She was of the opinion that it would be uncomfortable for Respondent to walk, but that her condition is not disabling.

14. (A) Based on her physical examination of Respondent and review of medical records, Dr. Benrazavi made the following diagnoses:

Poorly controlled diabetes mellitus with mild to moderate peripheral neuropathy in bilateral upper and lower extremities;

Asthma, currently under control;

Hypertensive cardiac disease without evidence of heart failure;

Status post closing of left lower extremity infected wound with no significant residuals except scar.

(Ex. 10, p. 10.)

(B) In the discussion section of her report, Dr. Benrazavi references Respondent’s history of chronic kidney disease “that is still mild.” (Ex. 10, p. 10.) The report and the doctor’s testimony indicate that Respondent had been hospitalized in approximately November 2012 because of her asthma, although asthma is the one condition that afflicts Respondent which Dr. Benrazavi does not label as chronic.

15. At the hearing, Dr. Benrazavi referred to nerve damage in discussing Respondent’s neuropathy. She indicated that any improvement in that condition would require improvement in Respondent’s diabetes, a condition that Respondent has lived with for years, and which shows little sign of improving. Notwithstanding the diagnosis of chronic diseases and debilitating symptoms, Dr. Benrazavi concluded that Respondent was not disabled from performing her duties as an office technician.

#### *Respondent’s Testimony*

16. Respondent has suffered from hypertension and diabetes for many years. The neuropathy is associated with her diabetes.

17. Respondent credibly testified that her job required a significant amount of walking, and handling items from books and art supplies to files and paperwork. While the leg wound interfered with her ability to walk, the neuropathy has as well; it is not wholly manageable by medication. Respondent testified that she missed work during much of 2011 and 2012. While much of the lost time in 2012 appears to have been a result of the cut on her leg, she testified that she also lost many days in 2011 due to headaches. The headaches are related to her hypertension.

18. Respondent's overall condition has not improved since she applied for disability retirement, but has worsened. Testing conducted in February 2015 indicates that she has suffered a number of micro-infarctions in her brain, essentially minute strokes. At the hearing, Dr. Benrazavi related these to Respondent's hypertension. At the same time, Respondent's neuropathy is such that it now hurts to wear her shoes. This supports a finding that Respondent's maladies were of an extended duration and unlikely to improve substantially in the foreseeable future.

19. Respondent was credible in her testimony, in terms of her demeanor and the content of her statements. Dr. Benrazavi, while maintaining her belief that Respondent was not disabled from her employment, also stated that Respondent is not malingering, and that Respondent's suffers from significant chronic diseases.

## LEGAL CONCLUSIONS

1. Respondent is a miscellaneous member of PERS, subject to section 21150, and credited with sufficient service to retire. She thereby is qualified for disability retirement upon the appropriate showing. Further, PERS has jurisdiction to determine whether Respondent is entitled to such disability retirement. This conclusion is based on sections 21150 and 21151, and Factual Findings 1 through 6.

2. A person seeking disability retirement bears the burden of establishing the right to that benefit. (Evid. Code, § 500; *Lindsay v. County of San Diego Ret. Bd.* (1964) 231 Cal. App. 2d 156, 160-61.) The standard of proof is preponderance of the evidence. (Evid. Code, § 115.)

3. A disability, within the meaning of the public employees retirement law, is a condition that is permanent or of extended and uncertain duration, as determined by the Board on the basis of competent medical opinion. (§ 20026.)

4. Whether a person is incapacitated or disabled must be judged based upon an examination of the regular and customary duties assigned to that person. (*Mansperger v. Public Employees Retirement System* (1970) 6 Cal.App.3d 873, 876.) The applicant must establish that he or she is substantially unable to perform his or her usual duties. (*Mansperger, supra*, 6 Cal. App. 3d at 876; *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 859-860.) The cases hold that written job descriptions alone do not control

the analysis of what a member's usual job duties are; other evidence may be examined as well. (*Hosford, supra*, 77 Cal.App.3d at 861-862.) In this matter, Respondent's testimony was used, along with the written job description, to determine the nature of her usual job duties. (Factual Findings 7-9.)

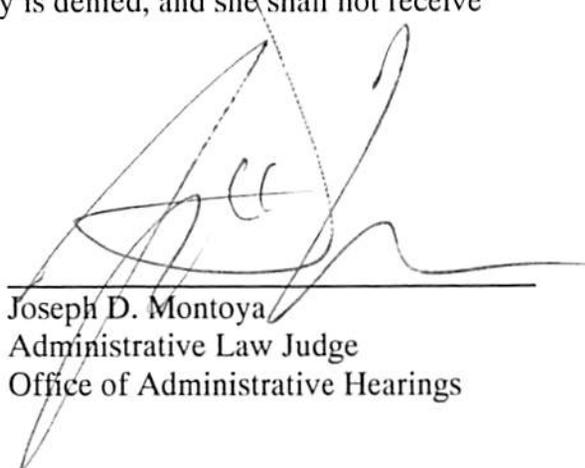
5. Respondent has a disability within the meaning of section 20026, in that her conditions of diabetes and hypertension are permanent or of an extended and uncertain duration, based on Factual Findings 11-15, and 18. The symptoms of those conditions have affected her ability to work prior to her filing of her application, based on Factual Finding 17.

6. A determination of incapacity is to be based on the medical examination and other available information, and on competent medical opinion. (§21156, subd. (a)(1), (a)(2).) It is clear from the medical examination that Respondent suffers from diabetes and hypertension, and moderate neuropathy. The record in this case—which includes “other available information” besides the IME report and Dr. Benrazavi's testimony—establishes that the job requires a substantial amount of walking. Plainly, that is an issue for Respondent. However, she has not been able to establish, by competent medical evidence, that at the time she applied, her difficulty with walking had incapacitated her. Her application points to the wound on her leg as the reason she could not walk, and that wound was healed by the time of the IME. On this record, and without more pointing to incapacity in August 2012, when the Application was filed, it can not be determined that Respondent is incapacitated by her disability.

#### ORDER

The appeal of Respondent Tanya E. Donley is denied, and she shall not receive disability retirement benefits from PERS.

June 3, 2015



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Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings