

**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:

Case No. 2013-0213

GLORIA HANNAH,

OAH No. 2015020248

Respondent.

and

COUNTY OF SANTA CLARA,

Respondent.

**PROPOSED DECISION**

Administrative Law Judge Regina Brown, State of California, Office of Administrative Hearings, heard this matter on August 6, 2015, in San Jose, California.

Rene Salazar, Senior Staff Attorney, represented California Public Employees' Retirement System (CalPERS).

There was no appearance by or on behalf of respondent Gloria Hannah. Respondent County of Santa Clara was neither present nor represented.

The matter was submitted on August 6, 2015.

**FACTUAL FINDINGS**

1. From 1998 to 2008, respondent Hannah was employed by respondent County of Santa Clara as a janitor. By virtue of her employment, respondent Hannah<sup>1</sup> is a local miscellaneous member of CalPERS. She has the minimum service credit necessary to qualify for retirement.

<sup>1</sup> All references to respondent refer to respondent Hannah. PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED

August 11 2015

*[Handwritten Signature]*

2. On September 8, 2011, respondent filed a CalPERS disability retirement application on the basis of an orthopedic (cervical sprain/strain, thoracic and lumbar spine) condition. CalPERS denied her application on the basis that she was not permanently disabled or incapacitated from her duties as a janitor. On October 26, 2012, respondent filed a timely appeal.

3. On January 29, 2015, Diane Alsup filed the Statement of Issues in her official capacity as Interim Chief of the Benefit Services Division, CalPERS. Respondent was properly served with the Statement of Issues and Notice of Continued Hearing in compliance with the notice and services requirements of Government Code sections 11505 and 11509. This matter proceeded as a default hearing under Government Code section 11520.

4. As a janitor, respondent was responsible for performing the full range of janitorial duties, including cleaning an assigned building or building area. The physical demands of the job required her to constantly stand, walk, push, pull, lift and carry up to 50 pounds, operate foot controls, and use repetitive movement. She would frequently kneel, squat, bend and twist her neck and waist, grasp, and walk on uneven ground. Occasionally, she would run, climb, reach above and below her shoulder, use a keyboard and mouse, lift or carry up to 100 pounds, and work with heavy equipment.

5. In 2000, respondent suffered an industrial injury to her back. She was off work for five months and returned to duty. Over the next eight years, she had episodes of back pain and received treatment. On October 27, 2008, while pushing and pulling a heavy hospital bed, she experienced pain in her back. She went home. The next day she returned to work and was directed to the USHealth Works industrial medical clinic where she received treatment for approximately one year. On December 13, 2008, respondent had an MRI which showed an L5-S1 mild disc degeneration with broad central/right five millimeter disc protrusion causing right lateral recess stenosis and displacement of the S1 nerve root, and moderate right and mild left foraminal narrowing.

6. From 2009 to 2011, respondent received treatment from chiropractor Sohila Bodner. On September 22, 2011, Bodner diagnosed respondent with lumbosacral contusion, cervical spine and low back sprain/strain, radiculopathy, and myofascitis. Bodner considered respondent to be substantially and permanently incapacitated from performance of the usual duties of the position of janitor. Bodner considered respondent not able to do heavy labor, lift more than 10 pounds, push or pull heavy objects, and no prolonged standing or sitting.

7. William R. Stearns, M.D., a board-certified orthopedic surgeon, conducted an independent medical evaluation of respondent on May 16, 2012, at the request of CalPERS, and submitted a report. He reviewed respondent's medical records and conducted an orthopedic examination. Respondent complained of intermittent moderate to severe pain in her upper back, knees, head, shoulders and arms occurring three to four days out of seven. She indicated that lying down and applying heat helped to alleviate her pain. She also complained of constant pain in her lower back, buttocks, both legs and feet and her right hip. According to respondent, standing and sitting is limited to one hour, lifting is limited to 20

pounds, and she uses a low back support. Dr. Stearns diagnosed respondent with lumbar strain aggravating pre-existing L5-S1 degenerative disc disease. He was unable to identify any specific job duty that respondent is unable to perform because of a physical condition. He concluded that, based upon his professional opinion, respondent was not substantially incapacitated for the performance of her usual duties.

8. Respondent failed to appear, and the matter proceeded as a default hearing. No other medical evidence was offered into evidence.

### LEGAL CONCLUSIONS

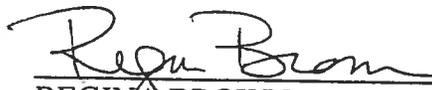
1. A CalPERS member who becomes “incapacitated for the performance of duty” shall be retired if she possesses the required credited service. (Gov. Code, § 21150.) The term “incapacitated for performance of duty” is defined by the Public Employees’ Retirement Law (PERL) to mean “disability of permanent or extended and uncertain duration . . . on the basis of competent medical opinion.” (Gov. Code, § 20026.) To determine whether an applicant is “incapacitated for performance of duty,” the courts look to whether the applicant is disabled from performing the substantial range of her usual duties. (*Mansperger v. Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 876, *Hosford v. Bd. of Administration* (1978) 77 Cal.App.3d 854, 859-860.) A finding of incapacity for duty must be made “on the basis of competent medical opinion.” (Gov. Code, § 21026.) The member has the burden of proving incapacity.

2. The evidence did not establish that respondent had a disability that substantially incapacitated her from performing her job duties as a janitor with the County of Santa Clara. Cause exists to sustain CalPERS’s denial of respondent’s disability retirement application, as set forth in Factual Findings 7-8, and Legal Conclusion 1.

### ORDER

The application of Gloria Hannah for CalPERS disability retirement is denied.

DATED: August 7, 2015

  
REGINA BROWN  
Administrative Law Judge  
Office of Administrative Hearings