

01-24-'13 14 32 FROM-CITY OF S BERNARDIN 9093845397

T-339 P0002/0003 F-068

**BEFORE THE DISABILITY AND REHABILITATION HEARING OFFICER
OF THE CITY OF SAN BERNARDINO**

In the Matter of the Application of
RICHARD LEWIS

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

The above-captioned matter, concerning the issue of disability for the performance of duties of Fire Captain for the City of San Bernardino of **RICHARD LEWIS**, came before **TERI BAKER**, Disability and Rehabilitation Hearing Officer, on October 30, 2012

The Hearing Officer examined and considered the proofs offered by the parties. These proofs included an Interoffice Memorandum from Ms Rhonda Haynes, Risk Division Manager, dated October 29, 2012, and the report of Stanley Majcher, M D , F A C P , dated September 17, 2012. The Disability and Rehabilitation Hearing Officer being fully advised makes her Findings of Fact and Conclusions of Law as follows

FINDINGS

1 Applicant, **RICHARD LEWIS**, was hired by the City of San Bernardino as a Firefighter on March 30, 1981, was later promoted to the position of Fire Captain and remained in that position until he retired on November 1, 2012

2 During his career, Mr Lewis sustained the following injuries

5/20/84	Neck/Disk
8/3/93	Lower Extremity
3/9/02	Right Shoulder Strain
6/2/04	Right Knee Pain
1/19/08	Left Leg
10/15/09	Right Knee
1/9/11	Left Wrist
7/6/11	Right Knee
7/19/11	Cancer
7/19/11	Knees, Hearing Loss, Right Shoulder

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1 3 Mr Lewis's current diagnosis is Large B Cell lymphoma in remission, hypertension,
2 history of pancreatitis and gallstones, history of gastric ulcer, and sleep disorder

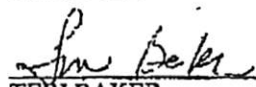
3 4 Mr Lewis is precluded from climbing/bending, squatting/kneeling, and standing or
4 walking for more than 15 minutes per hour

5 5 The City of San Bernardino Human Resources Department, Risk Management
6 Division, recommends a finding that Mr Lewis's work restrictions cause him to be a qualified
7 injured worker and in need of vocational retraining pursuant to Labor Code section 139.5 The San
8 Bernardino Fire Department does not have permanent modified duty status, therefore, RICHARD
9 LEWIS could not continue his employment there given his condition The Risk Management
10 Division therefore has recommended RICHARD LEWIS for an industrial retirement

11 **CONCLUSIONS**

12 Based on objective evidence, I find and determine that the Applicant, RICHARD LEWIS,
13 is incapacitated within the meaning of the Public Employees' Retirement Law for the performance
14 of his usual duties as a Fire Captain for the City of San Bernardino Fire Department, and that he is
15 incapacitated for performance of the usual duties of the position for other California public agencies
16 in CalPERS Similar positions with reasonably comparable pay, benefits, and promotional
17 opportunities with other California public agencies are not available Such industrial disability is
18 a result of an injury arising out of and in the course of employment and not caused by the negligent
19 act of a third party As such, RICHARD LEWIS's last date of payroll was October 31, 2012
20 RICHARD LEWIS's effective date of said industrial retirement was November 1, 2012
21 DATED November 27, 2012

22 APPROVED

23 
24 TERI BAKER
25 Hearing Officer