

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Application for
Disability Retirement of:

Case No. 2014-0423

MAY LLOYD,

OAH No. 2014110143

Respondent,

and

CALIFORNIA DEPARTMENT OF
JUSTICE, OFFICE OF THE ATTORNEY
GENERAL,

Respondent.

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on September 22, 2015.

Rory Coffey, Senior Staff Attorney, represented petitioner Anthony Suine, Chief, Benefit Services Division, Board of Administration, California Public Employees' Retirement System (CalPERS), State of California.

May Lloyd appeared and represented herself.

There was no appearance by California Department of Justice, Office of the Attorney General (DOJ).

ISSUE

Was Ms. Lloyd permanently disabled or incapacitated from performing the regular and customary duties of a Senior Legal Analyst due to emotional and mental stress?

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM

FILED Oct 21, 2015

C. Bodley

FACTUAL FINDINGS

Preliminary Matters

1. Ms. Lloyd was employed by DOJ as a Senior Legal Analyst. By virtue of her employment, Ms. Lloyd was a state miscellaneous member of CalPERS subject to Government Code section 21150.

2. On January 24, 2013, Ms. Lloyd filed a Disability Retirement Election Application with CalPERS. She claimed the right to receive a disability retirement because of "emotional and mental stress due to hostile work environment leading to physical disabilities." She claimed the disability occurred in "2008, 2009 and 12/24/ 2010 - present" while she was "working with numerous attorneys in 2008, who have intensely scrutinized, criticized my work blamed me for their faults, provided false info on performance reviews [sic]." She identified her limitations/preclusions due to her injury or illness as "on and off work on SDI due to stress since 2008." Her injury or illness affected her ability to perform her job: "Greatly. Loss of total confidence, feelings of inadequacy, sick feelings to come to work." She was still employed full-time when she filed her application but had been on medical leave since December 13, 2012. In the "Any Other Information" section Ms. Lloyd wrote, "I feel the attorneys I have worked with for the past years are out to sabotage my reputation and make life unbearable."

3. CalPERS obtained some of Ms. Lloyd's medical records related to her mental condition.¹ CalPERS retained Jaga Glassman, M.D., a board certified psychiatrist, to perform a psychiatric disability evaluation. Dr. Glassman provided CalPERS with narrative reports of his findings and conclusions, including a clarification report. After reviewing all of those documents, CalPERS determined that when Ms. Lloyd filed her application for a disability retirement, she was not permanently disabled or incapacitated from performing the usual and customary duties of a Senior Legal Analyst.

4. On September 5, 2013, CalPERS notified Ms. Lloyd that her application for disability retirement was denied. CalPERS advised her of her right to appeal that adverse determination.

5. On September 14, 2013, Ms. Lloyd timely filed her appeal.

6. On October 21, 2014, petitioner filed the statement of issues in his official capacity. The statement of issues and other jurisdictional documents were served on all respondents. Ms. Lloyd requested a hearing. DOJ did not respond to the statement of issues or appear in this matter. Upon proof of compliance with Government Code sections 11504 and 11509, this matter proceeded against DOJ as a default pursuant to Government Code section 11520.

¹ At hearing it was established that not all of Ms. Lloyd's records had been reviewed by CalPERS or Dr. Glassman.

CalPERS Documents Introduced at Hearing

7. The job duties of a Senior Legal Analyst were outlined in a California Department of Human Resources memorandum.

8. A July 11, 2013, PsyCare Initial Evaluation and Development of Treatment Goals contained Ms. Lloyd's handwritten information in which she identified her weaknesses as "work" and that her goals for treatment were to "get out of present work situation." Her motivation for treatment was to "appeal state disability denial." She felt a "new work environment" would be helpful in her treatment.

9. Dr. Glassman's curriculum vitae documented his educational and employment history.

10. On July 22, 2013, Dr. Glassman performed an independent psychiatric medical evaluation and authored a report. Dr. Glassman reviewed records, interviewed Ms. Lloyd, and performed a mental status examination. During his interview with Ms. Lloyd, she told Dr. Glassman that she felt incapable of performing her usual work as a Senior Legal Analyst "to the level of proficiency I was able to do the work in the past." She claimed that the people she works with and the "quite hostile" work environment interfered with her ability to do her job. Dr. Glassman asked Ms. Lloyd if she could work to her prior level of proficiency if placed in a good work environment and she told him she did not think so, because she believed she has been tainted by her experience working with attorneys. She did not think she could work with "the personality types of attorneys." She now finds that working with attorneys is stressful and would prefer to do some other type of work. Ms. Lloyd told Dr. Glassman that before this all began, she used to be happy, but now had problems sleeping, overeating and drinking too much. She had gained 40 pounds and had been drinking alcohol "more" the last two years, drinking about one bottle of wine every evening to relax and decrease her stress. She was currently "slowing it down" but was still drinking "some nights and weekends."

Ms. Lloyd reported that she worked at DOJ for 16 years. Her work environment changed in 2008 when five new attorneys were hired. She described her hostile work environment; the difficulties the new attorneys caused her; becoming tearful when discussing the disrespectful treatment she received; the difficulties she had working with the new attorneys; and the disrespectful way the attorneys treated her. She became stressed due to her environment, and began to feel angry, depressed and hopeless. She told Dr. Glassman that since she began seeing a counselor and taking an antidepressant, she felt better; was coping and was functioning adequately in her job just not to her prior level of proficiency. Ms. Lloyd reported that her mood was better; and she was able to enjoy some things in life, but was still having problems sleeping and overeating. She said that her energy and "interest in things in general" was decreased. She was treating with a psychologist and taking Valium as needed for anxiety. She was also using an inhaler for her panic attacks.

Dr. Glassman noted that Ms. Lloyd was well engaged during the examination. Her thought processes were coherent, relevant, goal-directed, and there were no psychotic symptoms. She had a well put together physical presentation, was animated and spontaneous, but became "a bit tearful" talking about the disrespectful and difficult treatment she was receiving at work. Dr. Glassman reviewed records from Brad Miller, Psy.D., who diagnosed Ms. Lloyd with generalized anxiety disorder, depression and weight gain. The records from Barbara Denysiak, M.D., noted that Ms. Lloyd presented on July 30, 2012, with complaints of worsening symptoms of generalized anxiety disorder and depression. Dr. Denysiak prescribed medication for Ms. Lloyd's panic attacks but did not document performing a mental status examination.

Based upon his interview with Ms. Lloyd and his review of records, Dr. Glassman's Axis I diagnosis was major depression, in partial remission, with psychotherapeutic and pharmacological treatment; anxiety disorder not otherwise specified; possible panic disorder; and alcohol abuse - decreased, but ongoing. There was no Axis II diagnosis. Dr. Glassman's Axis III diagnosis was weight gain, and his Axis IV diagnosis was psychosocial stressors - ongoing mild workplace stressors. His current global assessment of functioning was 75, as Ms. Lloyd "functions quite well." Dr. Glassman concluded that Ms. Lloyd was not substantially incapacitated from performing her usual duties as a Senior Legal Analyst. She had undergone significant workplace stress, had significant depression, anxiety, weight gain, and alcohol abuse problems but she was able to continue working despite those problems. Her symptoms have now lessened and she was coping better and she was thinking of pursuing other employment options.

11. On August 23, 2013, an Initial Intake Evaluation performed by Joshua Hall, M.D., noted that "Dr. Brad Miller" referred Ms. Lloyd for a psychiatric evaluation. Ms. Lloyd discussed her "hostile work environment" that began in 2008 when a new group of attorneys was hired. Ms. Lloyd discussed her anxiety, inability to sleep, low self-esteem, decrease in energy, problems socializing, inability to concentrate, and careless mistakes she made at work. She described the panic attacks she suffered. Ms. Lloyd cited the "primary stressor as her work." Her primary care physician had prescribed antidepressant medications since 2008, but Ms. Lloyd could not recall the names of those medications. Dr. Hall was able to confirm the medications with the pharmacy, including ones for back pain. Ms. Lloyd reported drinking a bottle of wine per day on weekends and fighting more with her husband.

Ms. Lloyd reported a history of postpartum depression after the birth of her daughter in 1992 that was "pretty bad" and lasted six to seven months. She was treated and received medication but could not recall the details of that therapy. Dr. Hall performed a mental status exam. His Axis I diagnosis was major depression recurrent, severe, with anxious features; alcohol abuse. His Axis II diagnosis was deferred. His Axis III diagnosis was back pain. His Axis IV diagnosis was moderate-severe, and he gave Ms. Lloyd a global assessment of functioning score of 50. His plan was to place her on a trial of medication for depression and anxiety, continue her current anxiety medication, encourage her to reduce her alcohol intake, continue her therapy with Dr. Miller and have her return in one month. However, Dr. Hall noted that he "did not take her insurance" and she did not have the

finances to pay out-of-pocket, so he referred her to other facilities for treatment. Dr. Hall noted that Ms. Lloyd continued to be unable to work and would be given a copy of Dr. Hall's report for "her appeal of SDI."

12. On February 24, 2014, CalPERS provided Dr. Glassman with additional records and asked him, "If [Ms. Lloyd] were to return to work would it be medically probable that she would be substantially incapacitated from performance of her usual duties?" Dr. Glassman checked the box marked "No" and wrote, "She has been working!"

13. On February 14, 2014, Dr. Glassman wrote a "Clarification Report" in which he rewrote the February 24, 2014, CalPERS question that had been posed to him, and replied, "Please allow me to clarify. No, it would not be medically probable that [Ms. Lloyd] would be substantially incapacitated from performance of her usual job duties as the member has been working."

14. An October 16, 2013, letter to Ms. Lloyd from DOJ contained its response to her request for limited duty. Ms. Lloyd had presented a note from her medical provider, Barbara Denysiak, M.D., recommending that from October 10, 2013, through January 14, 2014, Ms. Lloyd be placed on limited duty for five hours per day and that she not lift more than 10 pounds. DOJ approved the limited request with some provisions, noting that she may have to work her five hours outside of the 10:00 a.m. to 3:00 p.m. time frame recommended by Dr. Denysiak due to an impending trial at DOJ. Moreover, DOJ's October 9, 2013, Letter of Instruction would remain in effect, requiring Ms. Lloyd to maintain consistent attendance and seek advance approval for time out of the office.

15. An October 17, 2013, letter to Ms. Lloyd from DOJ confirmed that her medical leave, as approved in DOJ's October 16, 2013 letter (Finding of Fact No. 14, above), was "approved to be designated as [Families and Medical Leave Act]."

Claimant's Exhibits Introduced at Hearing

16. The curriculum vitae of Raphael Morris, M.D., outlined his education and employment history.

17. On November 27, 2013, Dr. Morris wrote a psychiatric evaluation report. In it he noted that he first evaluated Ms. Lloyd on September 23, 2013, when she requested that he conduct a psychiatric evaluation to assess her capacity to return to the workforce and to review her disability status. His evaluation consisted of one and one half hours of interviews between September 23, 2013, and October 28, 2013, psychological testing, and reviewing records. His report contained a very thorough and detailed records review, and he reviewed many records that Dr. Glassman had not reviewed. Dr. Morris performed psychological testing that demonstrated a personality pattern of insecurity, fear of humiliation, strong sense of duty to obey and follow others, feelings of inadequacy, and that any type of disapproval created considerable tension for Ms. Lloyd.

Dr. Morris noted a past psychiatric history of Ms. Lloyd “needing substance abuse treatment.” Ms. Lloyd had also suffered “some anxiety in the past” but developed more severe mood symptoms beginning in 2008. Dr. Morris did not reference Ms. Lloyd’s postpartum depression and it is unclear if he was aware of it. Dr. Morris noted that there were “no deficits in activities of daily living at this point.” Ms. Lloyd’s condition began in 2008 with the hiring of new attorneys and her difficulty adjusting to those changes which led to a reemergence of her mood symptoms and anxiety that increased over time and escalated in 2012, when she received negative performance evaluations. Since then, she had suffered with anxiety, panic attacks and worsening depressive symptoms leading to reduced productivity at work and requiring time off from work. Her medical leaves were supported by multiple mental health clinicians. Dr. Morris noted that almost one year ago, Ms. Lloyd returned to work on modified status but had struggled to work full days and had taken days off due to her mental health. Ms. Lloyd proactively sought treatment but, given the severity of her symptoms, the clear deterioration of her work functioning, and her need to try multiple medications due to treatment resistance, Dr. Morris opined that her symptoms “seem way too high.”

Dr. Morris noted that although the negative feedback at work was her primary stressor, it came in the context of a woman who has recurrent major depressive disorder and anxiety disorder, and who had been functioning previously at a much higher level. She had undergone two years of intensive psychotherapy and taken multiple medication trials, but continued to experience disabling depression and anxiety symptoms. Dr. Morris opined that medical retirement was an appropriate intervention at this time. It appeared unlikely Ms. Lloyd would improve dramatically enough to be able to function at work, and much of her negative feedback at work was related to her disabling psychiatric symptoms that interfered with her efficiency and productivity. Her depressive disorder and anxiety interfered with her cognitive functioning, her energy levels, her productivity, and cannot be dismissed. Dr. Morris opined that there was objective evidence and objective psychological testing that supported his diagnoses, and Ms. Lloyd was “highly symptomatic even with treatment.” He disagreed with Dr. Glassman’s opinion that Ms. Lloyd’s major depression was in remission because Ms. Lloyd had recently undergone medication adjustments. Moreover, in October 2013, she was no longer looking at employment options, and, if the references in Dr. Glassman’s July 2013 report that Ms. Lloyd was looking at employment options, were true, they indicated that her symptoms had now worsened, since she was no longer seeking new employment, but was, instead, out on disability. Dr. Morris opined that although the work stressors were the predominant precipitating stressors, Ms. Lloyd suffered from depression and anxiety in the past, so it could not be determined that her work was the sole cause of her psychiatric condition. Dr. Morris also questioned Dr. Glassman’s global assessment of functioning score of 75 when all other providers had scores around 50.

Dr. Morris’s Axis I diagnosis was major depressive disorder, recurrent, severe; and panic disorder without agoraphobia. There was no Axis II diagnosis. Dr. Morris’s Axis III diagnosis was orthopedic conditions, and his Axis IV diagnosis was “being unhappy at work and unable to function full-time at work.” Dr. Morris gave Ms. Lloyd a global assessment of functioning of 48.

18. Excerpts of the records reviewed by Dr. Morris documented Ms. Lloyd's many treaters and medications. There were several references to her inability to work, issues at work, and her emotional state because of her work environment.

19. On December 20, 2013, Dr. Glassman authored a supplemental report after he reviewed additional records, including Dr. Morris's report. Dr. Glassman noted that during his evaluation,

I gave [Ms. Lloyd] every opportunity to tell me she was unable to function in her job as a paralegal, but she did not report this. She stated she was not functioning to her usual level of proficiency because of stressors in the workplace. She did not state that she was functioning to a low level of proficiency because of any mental symptoms or problems. She stated she no longer liked working with attorneys and felt that she could function better in a job not working with attorneys. To reiterate, she did not describe herself as being unable to perform in her job as a paralegal.

Ms. Lloyd had also reported that her mood was better, she was able to enjoy things in life, and was not sad or depressed all the time. She reported being able to take care of her grooming, household chores and work in a full-time job, which justified the global assessment of functioning score of at least 75. Dr. Glassman noted that it was possible that her condition and mental status examination changed in the two months between his evaluation and the one performed by Dr. Morris, but it was more likely that her "anger about her treatment in the workplace setting and her feelings of being mistreated and discriminated against, have led her to feel entitled to receive permanent medical disability." Nothing about Dr. Morris's report changed Dr. Glassman's opinions.

20. State Pay Period Calendars for 2011, 2012, 2013 and 2014, corroborated Ms. Lloyd's testimony about the days she did not appear for work. Ms. Lloyd acknowledged that she worked more hours in 2013 than she did in 2012.

21. A document from DOJ identified conditions that qualify as a "serious health condition." Being treated two or more times by a healthcare provider or having a chronic condition requiring treatment qualified as such conditions.

22. A DOJ document described the senior legal analyst duties and functions.

23. A document identifying the global assessment of functioning scale and the types of conditions warranting certain scores noted that scores of 41 to 50 are for serious symptoms or serious impairments in social, occupational or school functioning. Scores of 71 to 80 are for cases where symptoms are present, transient and expectable reactions to psychosocial stressors.

24. A February 3, 2014 letter from DOJ advised Ms. Lloyd that she worked 926 hours in 2011, 786 hours in 2012 and 1112 hours in 2013. She was on SDI from the beginning of 2011 through October 14, 2012; used leave credit from October 15, 2000, until October 15, 2013; and was currently on SDI, since October 16, 2013. She was advised that she needed to return to work or exercise various options that were outlined in the letter.

25. A February 8, 2013, Physician's Report on Disability completed by Dr. Denysiak, noted that Ms. Lloyd had been on disability on an intermittent basis and, a reduced schedule, from 2008 through 2012. Her findings were anxiety, panic attacks, unable to concentrate, make decisions, fatigue and insomnia. She diagnosed Ms. Lloyd with GAD-severe and major depression, severe symptoms. Ms. Lloyd was unable to concentrate, stay on task and carry out tasks. She was currently substantially incapacitated from performing the usual duties of her position because she was unable to complete any task accurately and timely. She "made a significant amount of serious mistakes with negative results and consequences." She was unable to gather information in a coherent way to format. Her condition was "not permanent" and Ms. Lloyd would not be able to return to her usual and customary duties for one to two years.

26. A February 8, 2014, Physician's Report on Disability from Brad Miller, Psy.D., advised that Ms. Lloyd had a work-related injury because she reported that in 2008 she was "working with new attorneys who have been very critical and blaming [sic]" of Ms. Lloyd for the attorneys' mistakes and errors. In August 2012, Ms. Lloyd received a negative performance review and reported that the attorneys made false statements about her in the review. Dr. Miller's findings were depressive symptoms including decreased sleep, feeling worthless and helpless, decreased concentration, lethargic, depressed mood, and anxiety symptoms including panic attacks, hypervigilance, irritability, muscle tension, restlessness, and recurrent distressing thoughts. Dr. Miller diagnosed Ms. Lloyd with moderate depression, recurrent; and anxiety disorder. He opined that she was currently substantially incapacitated from performance of her duties. In response to the question regarding how long the condition would last, Dr. Miller wrote an addendum in which he noted the unhealthy employment history, Ms. Lloyd's unsuccessful attempts to work in that environment, and wrote that she continued to experience a significant level of depression and anxiety, making it very difficult to perform her usual job duties; so, if she remained in her current work environment with these attorneys, it would be very difficult for her to perform the usual duties of her current position. Dr. Miller noted that the capacity was not permanent.

27. The September 11, 2013, PsyCare Initial Evaluation and Development of Treatment Goals documented Ms. Lloyd's history, complaints, treatment provided, level of functioning, and goals. The "Other Pertinent Findings" section noted that the "primary stressor relates to work problems since 2008 to present, recent reviews 2012 - 'needs improvement' comments are working [illegible] is 'like Charlie Brown throwing a football to Lucy' or doing work in a 'hostile environment' and feels she is made 'fun' of." The Axis I diagnoses were Occupational Problem; Moderate Depression, recurrent (since 2008) severe

with anxiety. There were no Axis II or III diagnoses. The Axis IV diagnosis was PSE, 3, severe (work stress - hostile environment).² The global assessment of functioning was 50.

Witness Testimony

28. Dr. Morris testified consistently with his report. Ms. Lloyd asked him to perform an independent evaluation for this hearing because he was not one of her treaters. Dr. Morris explained his evaluation and opinions. Dr. Morris had several concerns regarding Dr. Glassman's opinions. He was surprised that Dr. Glassman arrived at a global assessment function score of 75 and did not believe Dr. Glassman factored in the other treaters' reports that had the scores in the same range as Dr. Morris. Dr. Morris gave Ms. Lloyd a global assessment of functioning score of 48 because she was having moderate symptoms with panic attacks, social difficulties and employment issues. A score of 75 is for individuals with transient symptoms or temporary symptoms and Dr. Morris saw no evidence that Ms. Lloyd's symptoms were transient or temporary. Additionally, Dr. Glassman reported that Ms. Lloyd was back at work but, she was not, she had already filed for disability. Furthermore, Dr. Glassman did not appear to have reviewed as many medical records as Dr. Morris reviewed and the other treaters all believed that that Ms. Lloyd had psychiatric issues.

Dr. Morris's primary concern with Dr. Glassman's report was his failure to incorporate Ms. Lloyd's medical records in his evaluations. Further, Dr. Glassman saw Ms. Lloyd at a time when she was trying to work, so she was in a better state of mind than when Dr. Morris evaluated her. Moreover, Dr. Morris explained that "you cannot evaluate persons in a vacuum," the person's psychiatric and biological makeup must be factored in when evaluating the person's psychological condition. Because of her makeup, Ms. Lloyd became stressed and had panic attacks when her environment changed and she was more vulnerable to her environment, leading to the physical manifestations of her mood disorders.

Dr. Morris admitted that he had no basis to challenge the number of hours that DOJ contended Ms. Lloyd worked each month. He also admitted that Ms. Lloyd's alcohol consumption could interfere with her ability to sleep but her alcohol use did not "jump out at" him as the primary factor in her disability claim, although if he was her treating physician, he would ask her to reduce her alcohol consumption.

29. Dr. Glassman testified consistently with his reports. The information in his reports was based on his understanding of the facts as he learned them from Ms. Lloyd and from what he read in the records he reviewed. The fact that she was working full time was inconsistent with her claim that she was substantially incapacitated because she was able to function at work. Dr. Glassman "explored that inconsistency at some length with her" when he evaluated her. Ms. Lloyd explained that she was working but not to the same level of proficiency as she did before her environment changed. She described her hostile work environment but told Dr. Glassman that she was still functioning adequately. Based upon his discussions with her, he was able to rule out a mental disorder, especially since she claimed

² There was no testimony as to what this diagnosis meant.

that she would be able to perform at her previous level proficiency if she was in a new work environment. Dr. Glassman was able to “elicit the information quite clearly, and from her with very careful questioning.” Dr. Glassman testified that it was significant that Ms. Lloyd became tearful when they were discussing her work environment. He “was trying to tease out” how much of her condition was due to her work environment versus how much was due to an internal, mental disorder. Her “tearfulness only came up in the context of discussions regarding her work” and that was consistent with an individual who has a situational disorder and not one who has a mental disorder. Ms. Lloyd was not sad when any other topics were discussed. Her responses demonstrated that she was not substantially incapacitated due to a mental disorder; rather, her condition was due to a hostile work environment, which was a transient condition. Furthermore, she reported that she had been more stressed in the past, so her mood was improving, which also factored into his opinions.

Dr. Glassman testified about the negative effects of alcohol on mental functioning and sleep, as well as the fact that the medication she was taking were sedating and slowed mental functioning. Dr. Glassman explained that using an inhaler is not the proper treatment for anxiety or panic attacks. He also explained that people who are depressed usually do not pay attention to their appearance but Ms. Lloyd was fairly nicely groomed and well put together. Moreover, Ms. Lloyd was well engaged during the interview which is also unlikely for depressed individuals.

30. Ms. Lloyd testified about the changes that occurred at DOJ, creating a hostile work environment. She described her stellar career before her work environment changed and how hiring the new attorneys negatively impacted her work performance. Despite the changed environment, she struggled to keep up with the demands of work, but felt that her capabilities were called into question leading her to doubt her self-worth. Ms. Lloyd tried talking to her supervisor about the situation, but it continued to worsen. Because of her inability to function in that hostile work environment, Ms. Lloyd was absent repeatedly and her physician ultimately recommended that she file for disability. Ms. Lloyd testified that due to her poor work performance, she was afraid she would be demoted, suspended or terminated, so she spoke to Dr. Denysiak who placed her on medical leave. Ms. Lloyd is still struggling with the loss of her career.

Ms. Lloyd’s entire testimony on direct examination focused on her hostile work environment and its detrimental effect on her mental condition. That testimony supported Dr. Glassman’s opinions that her condition was transient and did not qualify as a permanent and stationary mental condition, but instead was due to her work environment.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Absent a statutory presumption, an applicant for a disability retirement has the burden of proving by a preponderance of the evidence that he or she is entitled to it. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

Applicable Statutes

2. Government Code section 20026 defines “disability” and “incapacity for performance of duty,” for purposes of a retirement, to mean “disability of permanent or extended and uncertain duration” based on “competent medical opinion.”

3. Government Code section 21150, subdivision (a), provides that a member who is “incapacitated for the performance of a duty” shall receive a disability retirement.

4. Government Code section 21156 provides that if the medical evaluation or other evidence demonstrates that an eligible member is incapacitated physically or mentally, then CalPERS shall immediately retire the member for disability.

Appellate Authority

5. “Incapacitated” means the applicant for a disability retirement has a substantial inability to perform his or her usual duties. When an applicant can perform his or her customary duties, even though doing so may be difficult or painful, the public employee is not “incapacitated” and does not qualify for a disability retirement. (*Mansperger v. Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 886-887.)

6. The fact that an injury increases an individual’s chances of further injury does little more than demonstrate that the injury is prospective, hence, speculative, and presently not in existence. It is insufficient to support a finding of disability. (*Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 863).

Evaluation

7. While there is no doubt that Ms. Lloyd’s work environment upset her greatly, the evidence demonstrated that her condition was caused by a situational stressor – her hostile work environment-- it was temporary and transient. Dr. Denysiak, Ms. Lloyd’s treating physician, noted that Ms. Lloyd’s disability was “not permanent.” Ms. Lloyd reported decreased proficiency; however, a reduction in proficiency is insufficient to establish a permanent and incapacitating condition. In order to qualify for a disability retirement, Ms. Lloyd must demonstrate that she was permanently disabled or incapacitated from performing the regular and customary duties of a Senior Legal Analyst when she filed her application. She failed to meet that burden at this hearing. Although her upsetting,

hostile work environment caused her problems, those problems did not rise to the level of being permanently disabling or incapacitating her from performing her job duties. As such, her application must be denied.

Cause Exists to Deny the Application

8. Cause exists to deny Ms. Lloyd's application for a disability retirement. A preponderance of the evidence did not establish that Ms. Lloyd became permanently disabled and incapacitated from performing the regular and customary duties of a Senior Legal Analyst when she filed her application for a disability retirement with CalPERS as a result of her mental condition.

ORDER

The application for a disability retirement filed by May Lloyd with the California Public Employees Retirement System is denied. CalPERS's denial of Ms. Lloyd's application is affirmed.

DATED: October 20, 2015



MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings