

**ATTACHMENT E**  
**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:

CARLOTTA LUNA

and

VENTURA YOUTH CORRECTIONAL  
FACILITY, CALIFORNIA DEPARTMENT  
OF CORRECTSIONS AND  
REHABILITATION,

Respondents.

Case No. 2014-1157

OAH No. 2015040725

**PROPOSED DECISION**

Ralph B. Dash, Administrative Law Judge, Office of Administrative Hearings, heard this matter on October 8, 2015, in Glendale, California.

Jeanlaurie Ainsworth, Senior Staff Counsel, represented Complainant.

Carlotta Luna (Respondent) represented herself.

The Statement of Issues was served and due notice of the time and place for hearing was given as required by the Government Code. There was no appearance by or on behalf of Ventura Youth Correctional Facility (VYCF) California Department of Corrections and Rehabilitation (CDCR).<sup>1</sup>

Evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

<sup>1</sup> Due to the failure to appear at the hearing by VYCF/CDCR after service of proper notice of the proceedings, its default is noted pursuant to Government Code section 11520.

PUBLIC EMPLOYEES RETIREMENT SYSTEM  
FILED October 19, 2015  
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## FINDINGS OF FACT

1. Diane Alsop, Acting Chief, Benefit Services Division, Board of Administration, California Public Employees' Retirement System (CalPERS), made the Statement of Issues in her official capacity.

2. At the time she filed her application (Exhibit 3), dated December 29, 2012, for disability retirement (application), Respondent was employed by CDCR to work at VYCF as an Office Technician. Respondent began work for CDCR in 2000. Based on that employment, Respondent is a local miscellaneous member of CalPERS. She has the minimum service credit to qualify for retirement.

3. On her application, Respondent listed her disabilities as "Uncontrolled Type 2 Diabetes, Fatigue, Priphral (*sic*) Neuropathy . . . Confusion, Weakness, Persistant (*sic*) Leg Pain & Neuropathy . . . Also, being Treated by Endocrinologist and Cardio Doctor (Heart) Side affects (*sic*) From Medications."

4. Respondent worked for CDCR only in the Youth Authority division. According to Exhibit 24, a job analysis for Office Technician from the California Youth Authority, Respondent's duties as of the date she filed the application were as follows:

The Office Technician is responsible for computer data input. Through the use of a computer terminal, the employee will call up necessary information from a stated data base. The information is usually printed out on a hard copy and distributed, as needed.

The computer terminal is operated consistently throughout the work shift. The employee will have short breaks from the operation of the keyboard, usually when distributing the hard copies, working with files or initiating other limited office tasks.

The employee handles files weighing three to seven pounds, usually for a period of approximately one to two hours per day. The filing function process is independent of the computer keyboard. The employee may utilize an electric typewriter. The employee may be required to type various forms, memos and letters. This function will entail manually rolling the roller of the typewriter, using either the left or right hand, and may involve the lining up of forms and cards into the typewriter.

The major duties carried out by the Office Technician are that of a data input type position, with occasional use of a typewriter for noncomputer generated data.

5. Respondent testified that her duties were as listed above, and she was also required to retrieve and re-file medical charts, make appointments, open mail, and help with

tuberculosis tests. She noted that her work at VYCF could be dangerous. She stated that "minors are criminals too and at any given moment they could snap." Respondent did not give any examples of a minor inmate having "snapped." Three medical experts testified on behalf of Complainant. Respondent declined to cross-examine any of them, nor did she present any expert testimony on her own behalf.

6. Respondent had heart by-pass surgery in 2002. That surgery was redone in 2005. On July 29, 2013, Robert B. Weber, M.D. performed an independent medical evaluation of Respondent. Dr. Weber is a board certified internist with an added subspecialty certification in cardiology. He prepared his report (Exhibit 11) on the same date he examined Respondent. He testified in accordance with his report. In his report, Dr. Weber notes Respondent's "HISTORY OF PRESENT ILLNESS" which Respondent substantially corroborated in her testimony. The history is as follows:

Mrs. Luna is a 58-year old married Hispanic lady. She stated that she started working at the California Department of Corrections in the year 2000. She began working at the Ventura Youth Corrections approximately 3-4 years ago. She stated that she had been off of work since June 2012, that Dr. Fouad put her on disability for a year because of uncontrolled diabetes mellitus, coronary artery disease, peripheral neuropathy, dizziness, anxiety and depression, confusion, and fluctuating blood pressure. I discussed the claimant's job description and work analysis in detail with her and she stated that she actually was handling objects considerably heavier than 10 pounds and that she was doing a good deal of squatting, reaching and pulling. I asked Mrs. Luna if she could perform parts of her job and she stated that she is moving to San Diego, where there is no youth correctional facility and consequently, she would by default have to work in an adult prison, where she does not know what an office technician's job would entail. I then asked Mrs. Luna that if she were not moving to San Diego, whether she believes that she could work at her usual job and she expressed doubt that she could work at the usual job because of handling files and walking. Mrs. Luna states that for approximately one month, she has had vague, mild sensation in her anterior chest, lasting about five minutes. She has exertional dyspnea [difficult or labored breathing] after walking one block. She has not orthopnea [difficulty breathing when lying down but relieved when sitting up]. She has occasional, rapid palpitations for approximately the past month.

7. Dr. Weber gave Respondent a thorough physical examination and reviewed her prior medical records. Dr. Weber stated that Respondent has and had "lousy diabetic control" and had "chronic deconditioning." He noted that Respondent's job was "basically sedentary." At page 14 of his report, Dr. Weber wrote:

It is my opinion that there are no job duties which Mrs. Luna is unable to perform because of a physical condition. None of her medical diagnoses, specifically diabetes mellitus, peripheral neuropathy, or coronary artery

disease affect her in a way as to impede her ability to carry out the physical requirements of her job duties. I, at this point, reiterate that Mrs. Luna claims that in actuality her job requires her to carry files weighing more than 10 pounds and that her job and the physical requirements of her job in actuality are otherwise in an unspecified manner greater than those listed in her detailed job description.

8. After Dr. Weber completed his report, CalPERS sent him additional medical records to review, particularly from Dr. Hany Fouad, one of Respondent's treating physicians. In his supplemental report (Exhibit 12), Dr. Weber noted two of Dr. Fouad's examinations of Respondent in 2013, the relevant portions of which are as follows:

Dr. Fouad states that the patient has a history of type 2 diabetes complicated with coronary artery disease peripheral neuropathy and diabetic retinopathy. She is seen for extension of her time off from work. The patient is under care of an endocrinologist for resistant diabetes secondary to medication side effects, noncompliance of medications and major depression. Coronary artery disease is currently stable under cardiologist's care. The patient wants referral for internal medicine evaluation and treatment and he recommends Dr. Baldwin. Ms. Luna wants note from work for current disabilities. . . .[¶ . . . ¶]

Is the member currently substantially incapacitated from performance of the usual duties of the position for their current employer? [Dr. Fouad] marked yes and added I reviewed patient's job duties. She is unable to sit/stand more than 30 minutes because of neuropathy. Limit walking to 15 minutes with unlimited sitting bending twisting reaching and (illegible) — secondary to dizziness and diabetes. She has difficulty (illegible). Secondary to uncontrolled diabetes and vision changes fluctuating blood sugar causes weakness numbness and confusion. **Will the incapacity be permanent?** [Dr. Fouad] marked no. **In addition he marked six months to a year for its probable duration.** (Emphasis added).

9. In his supplemental report Dr. Weber noted that after reviewing the additional medical records, his original opinion had not changed. In concluding his supplemental report, Dr. Weber wrote:

In regard to the questions regarding the CalPERS disability retirement criteria it is my opinion that upon review of the additional medical records provided I find no reason to alter my original opinions which I will reiterate below

It is my opinion that there are no job duties that Ms. Luna is unable to perform based on her history of coronary artery disease. I state this on the basis of the fact that her coronary artery disease remains clinically stable. Her diabetes mellitus persists on being difficult to control. However there is no evidence

that her diabetes or suspected diabetic peripheral neuropathy impede her ability to carry out the physical requirements of her listed job duties. The same certainly applies for her hyperlipidemia. Her hypertension is well controlled and it is not an issue

It is my professional opinion that Ms. Luna is not substantially incapacitated insofar as her cardiac condition and as her abovementioned internal medicine conditions are concerned.

10. Sean Leoni, M.D., examined Respondent on August 7, 2013, and wrote his report (Exhibit 20) the same day. Dr. Leone is a Diplomate of the American Board of Internal Medicine, the American Board of Ambulatory Medicine, and the American Board of Pain Management. He is a Qualified Medical Examiner. He took Respondent's medical history, reviewed her past medical records, and gave Respondent a physical examination. His testimony was consistent with his report, albeit the report was 'skimpy.' He diagnosed Respondent as "Status post coronary artery bypass graft . . . Coronary artery disease . . . Restless leg syndrome . . . Diabetes mellitus . . . Diabetic peripheral neuropathy of lower extremities and upper extremities." He concluded, "From a physical standpoint, from job descriptions given [substantially similar to the job descriptions given to Dr. Weber], the patient is able to perform her usual and customary type of duties."

11. At the request of CalPERS, Dr. Leoni wrote a supplemental report dated October 3, 2013 (Exhibit 21), to clarify his first report in terms of whether Respondent's peripheral neuropathy was an incapacitating condition. In his supplemental report, Dr. Leoni wrote, "I have reviewed my report again. The patient, although she has peripheral neuropathy, is not substantially incapacitated from her job description that was provided to me."

12. Dr. Leoni testified that Respondent's insulin is "out of control" and that "she needs insulin for sure." However, he felt that Respondent's diabetes did not prevent her from performing her usual and customary duties as an office technician.

13. Respondent was examined by Stephen J. Wilson, M.D. on January 23, 2014. He wrote his report (Exhibit 15) the next day. Dr. Wilson is a semi-retired psychiatrist and is a Diplomate of the American Board of Neurology and Psychiatry. He interviewed Respondent for one hour and 15 minutes and administered two tests, one designed to elicit a score with respect to anxiety and one designed to elicit a score on depression. The tests showed that Respondent had "mild anxiety" and "moderate depression." Dr. Wilson also reviewed Respondent's extensive medical records. His testimony was consistent with his report.

14. Dr. Wilson diagnosed Respondent with "Depression Disorder Secondary to General Medical Condition." It was his opinion that Respondent was overly focused "on side effects of medications." He noted, "When asked what her current symptoms were, she said, 'Side effects from my medications,' and then read from pharmacy printout dizziness,

headaches, nausea, tiredness, trouble sleeping, pain in legs, depression, moodiness, forgetting things, muscle pain and weakness. When asked how she determined that these were side effects of her medications, she said 'Because they list them. I blame the medications.'"

15. Dr. Wilson does not believe that Respondent is malingering. He noted, "Her overall demeanor was cautious and mildly self-protective. She was fairly cooperative throughout the interview. Her eye contact was good. There were no abnormal behavioral mannerisms. She was oriented to time, place and person. Her speech was slow but relevant to topics discussed. . . . Her judgment was reasonable as, for example, if she were to find a letter on the sidewalk with an address and stamp, she would take it to the post office. Proverb interpretation was concrete. She was able to see similarities in objects only to a degree. She did not remember any of five things after a period of five minutes."

16. Dr. Wilson concluded his report by stating, "The bulk of her complaints are physical in nature with regard to difficulty in walking because of leg pain, as well as fatigue, and complaints of side effects from medications. . . . It is my opinion that from a psychiatric standpoint she could perform the majority of her duties, which include tasks of a typical office worker."

17. Respondent testified and confirmed virtually everything to which the three experts testified. She stated that she got depression because of her heart surgery. She complained that she could not sit for long, although she was able to sit for more than an hour at a time during the hearing. She emphasized that she could not reach files that were on top of the file cabinet. She also testified that her supervisor would help her if needed.

## CONCLUSIONS OF LAW

1. Absent a statutory presumption, an applicant for a disability retirement has the burden of proving by a preponderance of the evidence that s/he is entitled to it. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.) "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' (Citations omitted.) . . . The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) (Emphasis in original.) In meeting the burden of proof by a preponderance of the evidence, Respondent "must produce substantial evidence, contradicted or uncontradicted, which supports the finding." (*In re Shelley J.* (1998) 68 Cal.App.4th 322 at p. 329.)

2. Government Code section 20026 provides in part:

"Disability" and "incapacity for performance of duty" as a basis of retirement means disability of permanent or extended and uncertain duration, as determined by the board . . . on the basis of competent medical opinion.

3. Government Code section 21150 provides in part:

Any member incapacitated for the performance of duty shall be retired for disability pursuant to this chapter if he or she is credited with five years of state service, regardless of age . . . .

The term "incapacitated for the performance of duty" has been interpreted to mean that the employee is substantially unable to perform the usual duties of his or her position. (*Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689; *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876-877.)

4. Government Code section 21156 provides in part:

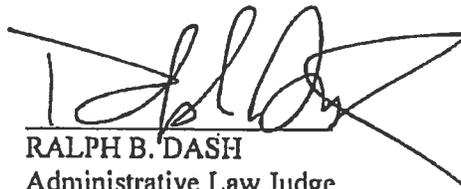
If the medical examination and other available information show to the satisfaction of the board, or in case of a local safety member, other than a school safety member, the governing body of the contracting agency employing the member, that the member in the state service is incapacitated physically 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 . . . .

5. The preponderance of the competent medical evidence established that, as of the date of her retirement application, Respondent was not substantially incapacitated from performing her usual and customary duties as an Office Technician for the Ventura Youth Correctional Facility and/or the California Department of Corrections and Rehabilitation.

ORDER

The application of Carlotta Luna for disability retirement is denied.

Date: 10-15-15

  
RALPH B. DASH  
Administrative Law Judge  
Office of Administrative Hearings