

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

BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Application for Industrial  
Disability Retirement of:

JULIETO E. ACEDILLO,

Respondent,

and

DEPARTMENT OF MOTOR VEHICLES,

Respondent.

Case No. 2015-0017

OAH No. 2015090778

**PROPOSED DECISION**

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on January 28, 2016, in Oakland, California.

Senior Staff Attorney Kevin Kreutz represented petitioner California Public Employees' Retirement System.

Respondent Juliето E. Acedillo was present<sup>1</sup> and self-represented.

There was no appearance on behalf of respondent Department of Motor Vehicles.

The matter was submitted for decision on January 28, 2016.

**FACTUAL FINDINGS**

1. Respondent<sup>2</sup> Juliето E. Acedillo was employed by the Department of Motor Vehicles (DMV) as a Licensing-Registration Examiner (LRE). By virtue of his employment,

<sup>1</sup> Respondent arrived late to the hearing. Petitioner's witness, Dr. Huffer, summarized his earlier testimony for the benefit of respondent.

<sup>2</sup> Although Juliето E. Acedillo and the DMV are identified as respondents in the caption, as used herein, the term respondent refers to Juliето E. Acedillo.

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM

FILED February 16 2016

*[Signature]*

respondent is a state safety member of the California Public Employees' Retirement System (CalPERS) and is subject to Government Code section 21151, which provides that state safety members who are "incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability . . . ."

2. On January 7, 2014, respondent signed an application for a service retirement. Respondent retired for service and has been receiving his retirement allowance since February 1, 2014. On January 9, 2014, respondent signed an application for an industrial disability retirement based upon orthopedic conditions (left shoulder and neck).

3. CalPERS obtained and reviewed medical reports regarding respondent's orthopedic conditions. It determined that respondent was not permanently disabled or incapacitated for the performance of duty as a LRE at the time he filed his application.

4. Respondent was notified of CalPERS' decision denying his application and was advised of his appeal rights by letter dated August 22, 2014. Respondent filed a timely appeal, and this hearing followed.

5. Respondent began working as an LRE for the DMV in 1995. As a LRE, respondent performed licensing and registration duties. Most of respondent's work involved administering driving tests. Respondent also spent about one hour per day performing administrative duties on the computer. The written description of job duties states that, in connection with administering performance tests, the LRE:

Gives written, oral, visual and practical performance tests in the course of examining applicants for ability and fitness to operate motor vehicles safely and for knowledge of Vehicle Code requirements.

The physical requirements of the job only occasionally required respondent to lift up to ten pounds and never required him to lift in excess of ten pounds. As a LRE respondent was never required to push or pull, climb, crawl or run, or to engage in fine manipulation or power grasping.

6. On July 23, 2013, in the course of conducting a driving test, respondent's vehicle was rear ended. At the time of the accident he was restrained in the front passenger seat. Respondent was transported by ambulance to the emergency room at Kaiser Redwood City, where respondent also received follow-up treatment.

7. Following the accident, respondent was off work for a couple of days. He experienced pain in his left shoulder and in his neck. Respondent received physical therapy and acupuncture to treat his pain, and he was also treated with Motrin. Respondent returned to work and performed his regular job duties with modifications such as getting in and out of cars with his upper right extremity (and not his left) and using a lighter clipboard.

8. At the request of PERS, orthopedic surgeon Bruce R. Huffer, M.D., conducted an Independent Medical Evaluation of respondent on June 30, 2014. Dr. Huffer examined respondent and reviewed his medical records, as well as the job duties of a LRE. He issued a written report and testified at the hearing.

9. During his examination, respondent told Dr. Huffer that his neck symptoms had resolved shortly after the accident. Respondent's chief complaint was that he experienced soreness and aches in his left upper arm and shoulder. Respondent explained to Dr. Huffer that he had discomfort at night and when he used his left arm overhead. Respondent had not recently received treatment for his shoulder or neck, and was not taking pain medication. Dr. Huffer noted that respondent's left shoulder had a limited range of motion. According to Dr. Huffer, a MRI report of respondent's left shoulder, dated February 14, 2016, revealed: "there is not a rotator cuff tear, there is a minimal supraspinatus tendinosis, [and] no other significant abnormalities are seen on the study."

10. Dr. Huffer described respondent's injuries as "relatively minor." While respondent's limited range of motion in his left shoulder would preclude him from performing overhead activities and heavy lifting, pushing and pulling, these limitations did not impact his regular job duties as a LRE. Dr. Huffer found that respondent was not substantially disabled for the performance of his job duties as a LRE. In reaching this conclusion, Dr. Huffer took into account that respondent returned to work within a few days after the accident and that respondent's injuries did not preclude him performing his regular job duties.

11. Respondent did not present any evidence at hearing other than to say that at times he still experiences pain in his left shoulder. He stated his wish to submit his case based upon the exhibits offered by petitioner.

12. Competent medical evidence did not establish that at the time respondent submitted his application for disability retirement that he suffered from orthopedic conditions in his left shoulder and neck that rendered him substantially unable to perform the usual duties of his position as a LRE.

### LEGAL CONCLUSIONS

1. The sole issue in this proceeding is whether respondent is permanently incapacitated for the performance of his duties as a LRE for the DMV. The question of whether the alleged incapacity has an industrial causation is determined by the Workers' Compensation Appeals Board in a different proceeding. (Gov. Code, § 2116.)

2. A CalPERS state safety member who is "incapacitated for the performance of duty as a result of an industrial disability" is entitled to be retired for disability regardless of age or amount of service. (Gov. Code, § 21151.) The term "incapacitated for performance of duty" as a basis for retirement is defined as "disability of permanent or extended and

uncertain duration . . . on the basis of competent medical opinion.” (Gov. Code, § 20026.) The term permanent incapacity has been interpreted to mean that the employee is substantially unable to perform the usual duties of his position. (*Mansperger v. Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 876-877.) It is respondent’s burden to prove by a preponderance of the evidence that he is incapacitated for the performance of his duties. (*Rau v. Sacramento County Ret. Bd.* (1966) 247 Cal.App.2d 234, 238.)

3. In the instant case, Dr. Huffer’s opinion that respondent was not disabled for the performance of his duties as an LRE by reason of his orthopedic conditions was persuasive and uncontroverted. In making this determination, it is noted that respondent was able to perform his job duties on a full time basis until he retired. Accordingly, respondent failed to establish that at the time he submitted his application for disability retirement that he was incapacitated for the performance of his duties as a LRE within the meaning of Government Code section 21151. Accordingly, he is not entitled to a disability retirement.

ORDER

The application of Juliето E. Acedillo for disability retirement is denied.

DATED: February 11, 2016

DocuSigned by:  
*Diane Schneider*  
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DIANE SCHNEIDER  
Administrative Law Judge  
Office of Administrative Hearings