

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 an of:

Case No. 2014-1151

STACI L. STENROOS,

OAH No. 2015030754

Respondent,

and

CALIFORNIA STATE TEACHERS'
RETIREMENT SYSTEM,

Respondent.

PROPOSED DECISION

This matter was heard before Administrative Law Judge Marcie Larson, State of California, Office of Administrative Hearings, on March 17, 2016, in Sacramento, California.

Kevin Kreutz, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Respondent Staci L. Stenroos was present at the hearing and represented herself.

There was no appearance by or on behalf of the California State Teachers' Retirement System (CalSTRS). CalSTRS was duly served with a Notice of Hearing. The matter proceeded as a default against CalSTRS pursuant to California Government Code section 11520, subdivision (a).

Evidence was received, the record was closed, and the matter was submitted for decision on March 17, 2016.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED April 12, 2016
Summer Darglett

ISSUE

Whether, at the time respondent filed her application for disability retirement on the basis of her orthopedic condition (cervical spine condition), respondent was permanently disabled or substantially incapacitated from performance of her usual and customary duties as a Staff Services Manager I (Manager) for CalSTRS?

PROCEDURAL FINDINGS

1. On June 21, 2013, respondent signed an application for disability retirement (application). In filing the application, respondent claimed a disability on the basis of a cervical spine condition. CalPERS received the application on June 24, 2013. Until approximately March 2014, respondent was employed as a Manager with CalSTRS. By virtue of her employment, respondent is a state miscellaneous member of CalPERS subject to Government Code section 21151.

2. CalPERS obtained reports concerning respondent's orthopedic conditions, prepared by Alexander M. Kane, M.D., Andy H. Vila, M.D., and Joseph Serra, M.D., who conducted an Independent Medical Evaluation (IME) of respondent. After reviewing the reports, CalPERS determined that respondent was not permanently disabled or substantially incapacitated from performance of her duties as a Manager, based on her orthopedic condition, at the time she filed her application.

3. On March 10, 2014, CalPERS notified respondent and CalSTRS that the application for disability retirement was denied. CalPERS provided respondent with a list of options, including resuming her work as a Manager with CalSTRS, or transferring to a different job with the same agency or another employer covered under CalPERS. Respondent was also advised of her appeal rights.

4. By letter dated April 4 2014, respondent filed an appeal and request for a hearing. Respondent also stated that she intended to provide additional medical documentation that would demonstrate her incapacity from the performance of her job duties in a "full time position."

5. On February 27, 2015, Diane Alsup, in her official capacity as Interim Chief, Benefit Services Division, CalPERS, signed and thereafter filed the Statement of Issues.

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FACTUAL FINDINGS

Respondent's Employment History and Duties as a Manager

1. Respondent worked as a Manager for the Facilities and Management/Business Continuity Department of CalSTRS, from approximately 2007, until her last date of service effective in March 2014. Respondent was 47 years old when she stopped working for CalSTRS.

2. As set forth in CalSTRS' duty statement, as a Manager for CalSTRS, respondent served as the "program manager and recognized expert for the CalSTRS Business Continuity Program." The program purpose was to "design, implement and assess business recovery strategies to ensure continuity of mission critical business process." A Manager must be able to perform the following essential functions:

- Independently maintain and coordinate the CalSTRS Incident Management Plan (IMP)
- Independently plan and write IMP materials and supplements such as the CalSTRS Pandemic Response Plan
- Independently track Emergency Operations Center (EOC) team staffing and update all EOC contact information quarterly
- Provide training and orientation for new EOC members
- At the request of the CEO, independently research and develop Business Continuity strategy recommendations for submittal to the Teachers Retirement Board
- Independently act as CalSTRS Business Continuity expert at quarterly Agency level State and Consumer Services Agency (SCSA) Business Continuity Team Meetings
- Independently respond to Emergency Information Requests from the State Governor's Office and the SCSA
- Single point of contact for related state department coordinated activities i.e. CalEMA and the OISPP coordination for the Annual Golden Guardian Exercise

- Independently plan, develop and execute the Annual Emergency Operation Center (EOC) exercise
- Independently develop and facilitate annual EOC tabletop or physical exercises to test the effectiveness of the CalSTRS IMP

3. On June 27, 2013, CalPERS received a completed “Physical Requirements of Position/Occupational Title” (Physical Requirements), signed by respondent. According to the Physical Requirements, when working as a Manager, respondent would: (1) constantly (over six hours per day) sit, bend and twist her neck, repetitively use her hands, and use a keyboard and mouse; (2) frequently (three to six hours per day) reach below her shoulders; (3) occasionally (up to three hours a day) stand, walk, squat, bend and twist her waist, reach above her shoulders, use fine manipulation, use simple grasping, carry up to 10 pounds, walk on uneven ground; and (4) never ran, crawled, climbed, kneeled, squatted, pushed or pulled, power grasped, carried more than 10 pounds, worked with heavy equipment, or was exposed to: excessive noise, extreme temperature, dust, gas fumes, chemicals, working at heights, operating foot controls or repetitive movements, using special visual or auditory protective equipment or working with bio-hazards.

Independent Medical Evaluation by Joseph Serra, M.D.

4. On January 6, 2014, at the request of CalPERS, Dr. Serra conducted an IME of respondent. Dr. Serra is a board-certified orthopedic surgeon. Dr. Serra operated a private practice from 1966 until 2002. He treated orthopedic patients. Dr. Serra teaches orthopedics to doctorate students in the physical therapy program at the University of Pacific. Since 2000, Dr. Serra has performed IMEs for CalPERS. Dr. Serra prepared a report dated January 6, 2014, concerning his IME of respondent. On September 2, 2014, Dr. Serra issued a supplemental report based upon his review of additional medical records. Dr. Serra testified at the hearing in this matter.

5. As part of the IME of respondent, Dr. Serra interviewed respondent, obtained a personal and medical history, had respondent complete an examinee questionnaire, conducted a physical examination, and reviewed respondent’s medical records related to her orthopedic condition. Dr. Serra also reviewed respondent’s duty statement and the physical requirements of her position as a Manager.

BACKGROUND AND COMPLAINTS

6. During the evaluation, Dr. Serra obtained a background and history of complaints from respondent related to her orthopedic condition. Respondent told Dr. Serra that she had a “congenital fusion of the cervical spine at C5-6 and had been developing progressive arthritis in her neck.” She had “chronic problems with her neck dating back to her 30’s.” She told Dr. Serra that she “awoke one morning in January 2011 with neck pain”

that did not go away. She attributed her neck pain to her work activities. Respondent also stated that she had pain in her right shoulder and right hand.

7. Respondent complained that she had a "pressure sensation in her skull behind both ears." She rated the pain a "6" out of 10. She had tenderness in the "posterior cervical musculature with swelling along the left side of her neck on a daily basis." The pain increased with activity. Respondent also reported that she had pain in her upper back, aching on the "ulnar side of the right hand with numbness into the right palm and middle, ring and little fingers."

8. Respondent reported that she started working part time in February 2012, due to her neck pain. Between June 2012 and February 2013, she took a leave of absence from work, due to neck pain. During the time she was off work, she attended a pain management clinic. When she returned to work, she worked part-time, four hours per day.

9. Respondent also reported that her daily activities were limited due to her neck pain. She could not vacuum, carry groceries, wash a car, do lawn work or make a bed. Lifting things caused her neck and shoulder pain. Sitting caused respondent burning in the back and shoulders. Reaching caused pain in the back of her neck.

PHYSICAL EXAMINATION

10. Dr. Serra conducted a physical examination of respondent. Dr. Serra noted that during the examination of respondent's cervical spine, she had "tenderness to palpation behind the ears bilaterally." He found "minimal tenderness in the paravertebral musculature until the lower cervical area of C6, 7 and T1 where there is mild tenderness bilaterally to palpation." Dr. Serra did not find any "muscle spasm or guarding." He noted "crepitus with rotation of the cervical spine." Crepitus is grinding of the joints which can indicate arthritis. Dr. Serra testified that it is common for individuals to have some grinding with certain motions.

11. The range of motion of respondent's cervical spine revealed flexion and extension 50 percent of normal, rotation 75 percent of normal, and lateral bending 50 percent bilaterally with pain on the left lateral cervical musculature.

12. Dr. Serra also conducted a neurologic examination of the upper extremities. Respondent's motor function was "intact." The sensory examination revealed "hypesthesia to light touch and pinwheel along the right medial ring finger of the volar." Dr. Serra also found "patchy hypesthesia to both medial and ulnar distributions in the right hand." Dr. Serra testified that respondent had reduced sensation along the ring finger of right hand and dullness to palpation to the thumb side of her middle finger of her right hand. The numbness and reduced sensation can be caused by fibers from the cervical spine and arthritis affecting the nerve.

13. Respondent's reflexes revealed "biceps, triceps, and brachioradialis to be 3+ bilaterally. Her peripheral pulses were intact."

14. Examination for respondent's right shoulder revealed "tenderness to palpation over the supraspinatus and bicipital groove." He also noted "palpable crepitus present with rotation." Dr. Serra testified that respondent's range of motion was "very good." Her only limitation was when she reached behind her back with her right arm and hand. Dr. Serra detected early signs of arthritis.

15. Respondent's range of motion for her "elbows, forearms, wrists, and hands were within normal limits."

16. Dr. Serra also tested respondents' grip strength with "Jamar measurements" with three trials. Respondent's right hand measured 60, 60 and 55 psi. Her left hand measured 60 psi each time. Dr. Serra described respondent's grip strength as "excellent."

17. Dr. Serra measured respondent's biceps and forearms. He found no evidence of atrophy in respondent's upper extremities.

REVIEW OF MEDICAL RECORDS

18. Dr. Serra reviewed respondent's medical records and diagnostic studies from July 1987 through February 2014. Dr. Serra testified that the MRI and medical records he reviewed suggest that respondent had "wear and tear," arthritis, congenital fusion in her neck and spinal stenosis. Dr. Serra testified that spinal stenosis occurs when the tube where the spinal cord is located narrows. Dr. Serra opined that respondent's spinal stenosis can affect grip strength. Dr. Serra opined that the condition did not have a significant effect on respondent's physical abilities.

IMPRESSIONS AND OPINION

19. Dr. Serra's impressions of respondent's conditions were:

- (1) Chronic cervical pain due primarily to congenital fusion C5-6 with cervical stenosis.
- (2) Tendonitis supraspinatus right shoulder.
- (3) Possible early degenerative change bicipital long biceps tendon right shoulder.
- (4) Morbid obesity

20. Dr. Serra opined that there are no specific job duties that respondent is unable to perform because of her orthopedic condition. He opined that respondent's subjective

complaints "far outweigh objective findings." His impression from the physical examination of respondent was that she could perform her usual and customary duties of her position as a Manager. Respondent's limited range of motion in her neck did not affect her ability to look down at a computer or look up to reach for things. The congenital fusion of her C5-6 also had very little effect on her physical abilities. Her range of motion due to the congenital fusion in her neck is reduced by approximately 10 percent because other levels of the cervical spine compensate for area that is fused.

21. Dr. Serra opined that based on his evaluation and review of respondent's job duties, respondent can perform all the functions of a Manager for CalSTRS. He further opined that respondent was not disabled or substantially incapacitated from the performance of her usual and customary duties as a Manager, as a result of her orthopedic condition.

Respondent's Testimony

22. Respondent has struggled with chronic neck problems during her adult life. She was diagnosed with a congenital fusion of two of the discs in her neck, spinal stenosis and arthritis in her neck. She was able to work full time until 2011, when she woke up with neck pain that did not go away. Respondent sought treatment for the pain, including ongoing physical therapy, medication, nutrition, meditation and mindfulness.

23. Respondent testified that her doctor wanted her to work four hours per day, so that she could participate in physical therapy, and attend classes five days per week at a pain clinic. After respondent returned from a leave of absence in February 2013, she worked four hours per day. The schedule worked well for approximately six months, until she began to have issues with her neck pain and "locking." At times, respondent was not able to turn her neck because of the "locking." After time, CalSTRS became "less flexible" in accommodating respondent's part-time schedule so that she could attend physical therapy. Respondent also began to take Gabapentin for pain. The medication helped her function, but she was not as effective at work. Respondent decided that she could no longer work. She applied for disability retirement, but continued to work for CalSTRS four hours per day, until March 2014 when her application was denied. Once her application was denied, she made the decision to separate from CalSTRS.

Discussion

24. When all the evidence is considered, Dr. Serra's opinion that respondent is not permanently disabled or substantially incapacitated from performance of the usual and customary duties of a Manager for CalSTRS, was persuasive. Respondent's physical examination and the medical records reviewed by Dr. Serra revealed that respondent has arthritis, congenital fusion in C5-6 and cervical stenosis. Dr. Serra persuasively opined that while respondent has pain and limited range of motion in her neck, her orthopedic condition does not prevent her from performing the usual and customary duties of a Manager.

25. Respondent claimed that she was unable to perform her job duties due to her orthopedic condition. However, respondent did not present competent medical evidence to support her disability retirement application. In the absence of supporting medical evidence, respondent's application for disability retirement must be denied.

LEGAL CONCLUSIONS

1. Respondent seeks disability retirement pursuant to Government Code section 21151. To qualify for disability retirement, respondent must prove that, at the time she applied, she was "incapacitated physically or mentally for the performance of his or her duties..." (Gov. Code, § 21156, subd. (a)(1).) As defined in Government Code section 20026,

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

2. "Incapacity for the performance of duty" under Government Code section 21022 [now section 21151] "means the substantial inability of the applicant to perform his usual duties." (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876.) Substantial inability to perform usual duties must be measured by considering applicant's abilities. Discomfort, which makes it difficult to perform one's duties, is insufficient to establish permanent incapacity from performance of one's position. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207, citing *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 862.) A condition or injury that may increase the likelihood of further injury, as well as a fear of future injury, do not establish a present "substantial inability" for the purpose of receiving disability retirement. (*Hosford v. Board of Administration of the Public Employees' Retirement System* (1978) 77 Cal. App. 3d 854, 863-864.) As the court explained in *Hosford*, prophylactic restrictions imposed to prevent the risk of future injury or harm are not sufficient to support a finding of disability; a disability must be currently existing and not prospective in nature.

3. An applicant for disability retirement must submit competent, objective medical evidence to establish that at the time of application, she was permanently disabled or incapacitated from performing the usual duties of her position. (*Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 697.) In *Harmon*, the court found that a deputy sheriff was not permanently incapacitated from the performance of his duties, because "aside from a demonstrable mild degenerative change of the lower lumbar spine at the L-5 level, the diagnosis and prognosis for [the sheriff's] condition are dependent on his subjective symptoms."

4. The burden of proof was on respondent to demonstrate that she is permanently and substantially unable to perform her usual duties such that she is permanently disabled. (*Harmon v. Board of Retirement of San Mateo County, supra*, 62 Cal. App. 3d 689; *Glover v.*

Board of Retirement (1980) 214 Cal. App. 3d 1327, 1332.) Although respondent asserted subjective complaints of disability, she did not present competent, objective medical evidence to establish that she was permanently disabled or incapacitated from performance of her duties as Manager for CalSTRS at the time she filed her disability retirement application. Therefore, based on the Factual Findings and Legal Conclusions as a whole, respondent is not entitled to retire for disability pursuant to Government Code section 21151.

ORDER

The application of Staci L. Stenroos for disability retirement is DENIED.

DATED: April 8, 2016

DocuSigned by:
Marcie Larson
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MARCIE LARSON
Administrative Law Judge
Office of Administrative Hearings