

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:

JOHN BUTTRAM,

Respondent.

and

DEPARTMENT OF TRANSPORTATION
DISTRICT 02,

Respondent.

Case No. 2015-0023

OAH No. 2015070361

PROPOSED DECISION

Administrative Law Judge Ed Washington, Office of Administrative Hearings, State of California, heard this matter on March 17, 2016, in Sacramento, California.

Senior Staff Attorney Christopher Phillips represented the California Public Employees' Retirement System (CalPERS).

There was no appearance by or on behalf of John Buttram (respondent) or the Department of Transportation District 02 (CalTrans).

The matter was submitted for decision on March 17, 2016.

ISSUE

Is respondent permanently and substantially incapacitated from performing his usual duties as an Equipment Operator II, for CalTrans, on the basis of an internal (fatigue, sleepiness, sleep apnea) condition?

FACTUAL FINDINGS

1. CalPERS properly served respondent with notice in this matter. The hearing proceeded as a default hearing pursuant to Government Code section 11520.

Respondent's Disability Retirement Application

2. Respondent was born in 1963. On September 16, 2013, he filed an application for service pending disability retirement. In his application, respondent described his disability as "Fatigue/Sleepyness" [*sic*] and specified that it occurred "8/2012." He provided no response to the question on the application that asks how his disability occurred. Respondent described his limitations and preclusions due to his condition as "I sleep around 12 hrs a day & can't stay awake more than a few." In response to the question that asks how his condition affected his ability to perform his job, respondent wrote that he was "[u]nable to operate trucks & equipment."

3. By letter dated October 3, 2014, CalPERS notified respondent that his disability retirement application was denied. The letter also advised respondent of his right to appeal the denial. On November 4, 2014, respondent appealed from CalPERS's denial of his disability retirement application.

Duties of an Equipment Operator II

4. As set forth in the CalTrans duty statement for Equipment Operator II, an Equipment Operator II is supervised by a CalTrans Maintenance Supervisor and "operates equipment identified as Category 1 and Category 2 used by assigned unit, and works individually or with a crew performing tasks related to highway maintenance work." Besides operating Category 1 and Category 2 equipment, the Equipment Operator II duties also include paving shoulder grading, mowing, ditch cleaning, dig outs, pavement patching, repair or replacement of guide markers, signs, fence, guardrail, clean culverts, traffic control, litter pick-up, maintenance of roadside rests, equipment care and servicing, and recordkeeping and reporting.

5. The work environment for a CalTrans Equipment Operator II includes a wide range of sometimes extreme conditions, including heat up to 120 degrees, cold to negative 15 degrees, strong winds, rain, sleet, and snow. The physical requirements for the position require occasional (up to three hours in an eight hour shift) to frequent (three to six hours in an eight hour shift) lifting, sitting, standing, carrying, reaching, pushing, pulling, twisting, climbing, bending, crouching, squatting, crawling, and simple grasping.

CalPERS's Expert

6. Sophie Cole, M.D., is board certified in Internal Medicine. She performed an independent medical examination (IME) on respondent, including a review of his medical records on August 22, 2014. Dr. Cole issued an eight-page IME report on that same day.

7. As set forth in Dr. Cole's IME report, respondent reported a long history of obstructive sleep apnea, fatigue, and daytime somnolence. He complained to Dr. Cole that for approximately 15 years he had felt tired all day and never wakes up rested. During the IME interview, respondent acknowledged progressive weight gain over the past 15 to 20 years and that he had used both a Continuous Positive Airway Pressure machine and Bilevel

Positive Airway Pressure machine (commonly referred to as CPAP and BiPAP machines) at night to help him sleep. He reported that he had never fallen asleep while driving vehicles as part of his job duties, but would sometimes pull off the road and take a nap when he felt tired.

8. After evaluating respondent and reviewing his medical records, Dr. Cole diagnosed respondent as follows:

1. Morbid obesity. He filled the medication of phentermine.
2. Psoriasis.
3. Tobacco abuse. He has smoked 2 packs per day for more than 35 years.
4. COPD.
5. Gout arthritis.
6. History of palpitations with negative Holter study. It was thought due to excessive caffeine intake.
7. History of Epstein Barr virus infection which is thought to be status post convalescent and felt to be chronic. On 1/16/2013 serologies confirmed convalescent and chronic titers.

9. In the "Discussion" section of the IME report, Dr. Cole opined that respondent was not substantially incapacitated for the performance of his usual job duties. Dr. Cole supported her opinion, in part, by noting that respondent exhibited no signs of hypersomnolence during the hour and fifteen minute examination. She also noted that respondent's lung and oxygen examinations were normal, as was his gait, motor strength, and sensory examination. He exhibited no physical or cognitive impairment.

10. Dr. Cole also noted that her opinion of respondent's ability to perform his job duties was supported by his history of performing home maintenance repairs without assistance. This included completing repairs on his roof, doors, and sinks, which by nature entail a fair amount of lifting, carrying, twisting, climbing, bending, squatting, and grasping.

Discussion

11. Respondent had the burden to present competent medical evidence to establish that he is permanently and substantially incapacitated for the performance of his usual job duties. Respondent did not appear at hearing and did not submit evidence to meet his burden. Consequently, his disability retirement application must be denied.

LEGAL CONCLUSIONS

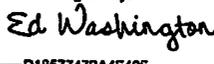
1. By virtue of his employment as an Equipment Operator II, for CalTrans, respondent is a local miscellaneous member of CalPERS and subject to Government Code section 21150. Respondent has the minimum service credit necessary to qualify for retirement.
2. Government Code section 20026, in relevant part, provides:

“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.
3. In *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876, the court interpreted the term “incapacity for performance of duty” as used in Government Code section 20026 (formerly section 21022) to mean “the *substantial* inability of the applicant to perform his usual duties.” (Italics in original.)
4. To qualify for disability retirement, respondent had to offer sufficient evidence, based upon competent medical opinion, to establish that, at the time he applied, he was permanently and substantially incapacitated for the performance of his usual duties as an Equipment Operator II, for CalTrans. Respondent failed to offer such evidence. Consequently, his disability retirement application must be denied.

ORDER

The application of John Buttram for disability retirement is DENIED.

DATED: April 8, 2016

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ED WASHINGTON
Administrative Law Judge
Office of Administrative Hearings