

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 the
Industrial Disability Retirement of:

CalPERS Case No. 2015-0307

EDWARD J. STUCKENSCHNEIDER,

OAH No. 2015080904

Applicant/Respondent,

and

CALIFORNIA DEPARTMENT OF
CORRECTIONS & REHABILITATION,

Employer/Respondent.

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 26, 2016, in San Diego, California.

Austa Wakily, Senior Staff Attorney, California Public Employees' Retirement System, State of California, represented petitioner, Anthony Suine, Chief, Benefit Services Division, California Public Employees' Retirement System, State of California.

Edward J. Stuckenschneider, Applicant/Respondent, appeared on his own behalf and was present throughout the administrative proceeding.

No appearance was made by or on behalf of California Department of Corrections & Rehabilitation, Employer/Respondent.

On September 26, 2016, the matter was submitted.

ISSUE

Was Edward J. Stuckenschneider permanently disabled or incapacitated from performing the usual and customary duties of a Special Agent with the California

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED 10/13 2016
John Wooten

Department of Corrections & Rehabilitation as a result of a bilateral carpal tunnel condition when he filed his application for an industrial disability retirement in June 2014?

FACTUAL FINDINGS

Preliminary Matters

1. Edward J. Stuckenschneider was employed as a Special Agent by the California Department of Corrections & Rehabilitation (CDCR). By reason of this employment, Mr. Stuckenschneider was a state safety member of the California Public Employees' Retirement System (CalPERS).

2. On June 19, 2014, Mr. Stuckenschneider signed an Application for an Industrial Disability Retirement. In his application, Mr. Stuckenschneider claimed the right to receive an industrial disability retirement allowance on the basis of a disabling orthopedic condition he described as "bi-lateral carpal tunnel."

On September 1, 2014, Mr. Stuckenschneider retired from service with the CDCR. Mr. Stuckenschneider has received a service retirement allowance since then, pending the resolution of his application for an industrial disability retirement allowance.

3. CalPERS obtained medical records and reports related to Mr. Stuckenschneider's orthopedic condition. CalPERS selected a board-certified orthopedic surgeon to perform a disability evaluation. Following an evaluation of Mr. Stuckenschneider, the orthopedic surgeon provided CalPERS with a narrative report containing findings and conclusions related to Mr. Stuckenschneider's eligibility for an industrial disability retirement.

After reviewing various records and reports, CalPERS determined Mr. Stuckenschneider was not permanently disabled or incapacitated from performing the usual and customary duties of a Special Agent when he filed his application for an industrial disability retirement.

4. By letter dated November 5, 2014, CalPERS notified Mr. Stuckenschneider of its adverse determination and his right to appeal.

5. By letter dated November 11, 2014, Mr. Stuckenschneider timely appealed CalPERS' adverse determination.

6. Petitioner signed the statement of issues in his official capacity on a date that was not set forth in the statement of issues. The statement of issues and other documents were served on Mr. Stuckenschneider and the CDCR.

7. On September 26, 2016, following a continuance, the record in this administrative proceeding was opened; jurisdictional documents were presented; the parties stipulated to the correction of the spelling of Mr. Stuckenschneider's name throughout the statement of issues; a stipulation was recited; sworn testimony was received; documentary evidence was produced; closing arguments were given; the record was closed; and the matter was submitted.

Applicant's Background

8. Mr. Stuckenschneider was born in 1963. He grew up in Southern California, graduating from Corona High School in 1983. While he was in high school, he was a police services cadet with the Corona Police Department. After high school, he became employed by the City of Corona as a fire and police dispatcher. In 1984, he was hired by the Corona Police Department as a police officer trainee. He completed POST basic training thereafter and was employed as a sworn law enforcement officer by the Corona Police Department from 1984 through August 1998. During his employment with the City of Corona, Mr. Stuckenschneider attended Riverside Community College, where he majored in the administration of justice.

In August 1998, Mr. Stuckenschneider became employed as a Special Agent by the California Department of Justice. He worked in narcotics and intelligence. Most of his time was spent driving. He estimated he drove at least 6,000 miles a month in connection with his employment with the Department of Justice.

9. In July 2008, Mr. Stuckenschneider became employed as a Special Agent by the CDCR. His responsibilities and daily routine changed. In his employment as a CDCR Special Agent, he primarily investigated complaints of misconduct filed against CDCR personnel. He obtained assignments, created an investigative plan, sought approval of the plan from attorneys and others within the CDCR, started a case report, gathered information, provided notices, completed required forms, interviewed witnesses and alleged wrongdoers, and prepared a comprehensive case review. He estimated 85 percent of his daily routine involved thinking and using a keyboard to input information at a workstation; about 10 percent of his time involved driving; the remaining five percent of his workday involved the completion of other tasks.

The Duties and Physical Demands of a Special Agent

10. According to a formal duty statement Mr. Stuckenschneider signed in April 2011, a CDCR Special Agent conducts internal affairs investigations and reviews investigation requests, monitors and manages a caseload of investigations, provides assistance in investigations related to employee misconduct, and enforces CDCR policies in the area of administrative and criminal laws.

According to a job description Mr. Stuckenschneider and his supervisor completed, the physical requirements of the Special Agent position required constant (more than six

hours) sitting, standing, bending the neck, twisting of the waist, reaching below the shoulder, fine manipulation of the hands, repetitive manipulation of the hands, keyboard use, and mouse use. The position required frequent (three to six hours) walking, twisting, reaching above shoulder level, pushing and pulling, and simple grasping. The position required occasional (up to three hours) running, crawling, kneeling, climbing, squatting, bending of the waist, and power grasping. The position required the occasional lifting and carrying of objects weighing up to 100 pounds for distances not exceeding ten feet.

Medical Evidence

11. Neil T. Katz M.D., is an orthopedic surgeon. Dr. Katz received a medical degree from Tuft University School of Medicine in 1981, completed a two-year general surgery internship in general surgery at the University of Hawaii in 1983, participated in a residency in orthopedic surgery at Tufts University School of Medicine in 1987, and completed a residency in orthopedic surgery at Catholic Medical Center in New York in 1991. He completed a fellowship in orthopedic surgery and sports medicine at the Kentucky Sports Medicine Clinic in 1992. He was awarded board-certification by the American Board of Orthopedic Surgeons in 2002.

Dr. Katz maintains a private medical practice with a main office in La Mirada, California. He is affiliated with several hospitals.

12. On September 24, 2014, Dr. Katz evaluated Mr. Stuckenschneider at CalPERS' request. He prepared a narrative report following that evaluation. During his evaluation, he obtained directly from Mr. Stuckenschneider his present complaints, a work history, occupational requirements, a history of the present injury, a past medical history, a social history, and a family history. Dr. Katz reviewed all medical records provided by CalPERS, which he summarized in his report. He conducted a physical examination of Mr. Stuckenschneider's cervical spine, shoulders, elbows, wrists and hands. Following his evaluation of Mr. Stuckenschneider, his review of records, and the physical examination, Dr. Katz reached several diagnoses that were included in his narrative report.

13. Dr. Katz's report, dated September 24, 2014, is summarized as follows. Mr. Stuckenschneider complained of pain in his elbows, forearm, wrists, hands, thumbs and fingers, which Dr. Katz characterized as "bilateral upper extremity pain."

Mr. Stuckenschneider told Dr. Katz his last day of work was August 29, 2014, and he did not retire from work because of any medical condition. Mr. Stuckenschneider said he could have continued working, but retired because he did not see any benefit in continuing work.

Mr. Stuckenschneider told Dr. Katz 80 percent of his job involved sitting and typing, and that there was also some driving.

Mr. Stuckenschneider provided a medical history that included shoulder surgeries in 1979 and 2013. He said he experienced pain and numbness in his upper extremities in November 2013, and his condition worsened thereafter. He said he underwent physical therapy, but it was not particularly helpful. He said he underwent an additional surgery in 2014 that was somewhat helpful. An ergonomic chair and new workstation provided some relief in 2014.

Dr. Katz reviewed past medical records that contained information related to the diagnosis and treatment of bilateral epicondylitis and bilateral carpal tunnel syndrome, as well as left shoulder surgeries.

Dr. Katz conducted a physical examination. He observed surgical scars over the left shoulder; there was full range of motion and full strength in the shoulders bilaterally; there was no tenderness to palpation. Dr. Katz found full active range of motion in the elbows, without instability, but with some tenderness; there was full strength in the elbows bilaterally. Dr. Katz found full passive range of motion in the wrists and hands, although Mr. Stuckenschneider had difficulty opening and closing his right hand; percussion testing resulted in pain traveling up the right forearm. Dr. Katz conducted Jamar dynamometer testing, which revealed grip strength of the right/major hand was greater than the left/minor hand.

Dr. Katz diagnosed bilateral lateral epicondylitis; bilateral medial epicondylitis; left carpal tunnel syndrome; right carpal tunnel syndrome.

In his report, Dr. Katz opined there were no job duties Mr. Stuckenschneider could not perform because of a physical condition, but frequent pushing and pulling and constant fine manipulation, repetitive use of the hands, keyboard use, and mouse use might perpetuate the symptomology. Dr. Katz believed that “despite his [Mr. Stuckenschneider’s] symptoms, he was capable of continuing the performance of his duties. In fact he states that he did not retire because of his medical condition.” Dr. Katz believed Mr. Stuckenschneider was not permanently incapacitated.

14. Dr. Katz subsequently reviewed an April 23, 2014, EMG/nerve conduction study in which the examiner described a bilateral carpal tunnel syndrome of a minor nature, worse on the right than the left. He reviewed clinical notes of Mr. Stuckenschneider’s office visits on August 12 and October 7, 2014. Dr. Katz authored a supplemental report, dated January 21, 2015, in which he stated his review of those records did not change his previously stated opinions and conclusions.

15. Dr. Katz subsequently reviewed a May 26, 2015, physical therapy recertification note and a dozen physical therapy progress notes for visits with Mr. Stuckenschneider occurring between August 4 and December 8, 2015. Dr. Katz authored a supplemental report, dated March 22, 2016, in which he stated his review of those records did not change his previously stated opinions and conclusions.

16. Dr. Katz's testimony was consistent with the opinions and conclusions expressed in his narrative report dated September 24, 2014, and his supplemental reports dated January 21, 2015, and March 22, 2016.

Dr. Katz's testimony was clear and understandable. He believed Mr. Stuckenschneider experienced some discomfort and pain when working as a Special Agent, and his work as a Special Agent may have aggravated that pain and discomfort. He believed Mr. Stuckenschneider was not malingering. However, Dr. Katz found no medical reason Mr. Stuckenschneider could not continue to work as a Special Agent based upon his physical condition.

17. Dr. Katz reviewed, for the first time, various medical records and reports Mr. Stuckenschneider brought to the hearing, including an operative report authored by Bradley Baum, M.D., related to a left shoulder surgery that took place on June 23, 2016, and a review of records prepared by Allan Michael Brecher, M.D., an Illinois orthopedic surgeon.

Dr. Katz observed that Dr. Baum's prognosis for Mr. Stuckenschneider's immediate and remote recovery was "good" and that Dr. Brecher opined, before the June 23, 2016, surgery, that the left shoulder surgery was not medically necessary.

Nothing in the records and reports Dr. Katz reviewed at hearing changed his opinion that Mr. Stuckenschneider was able to perform the usual and customary duties of a CDCR Special Agent.

Mr. Stuckenschneider's Testimony

18. Mr. Stuckenschneider testified he retired for a variety of reasons: first, his father was dying of Alzheimer's disease and needed assistance; second, he was qualified to retire by reason of his age and length of state service; and third, his physical condition was "lingering and troubling." Mr. Stuckenschneider testified that while he was able to take 10 minute breaks to relieve his discomfort when he was working in the office, he could not do so when he was working in the field.

Mr. Stuckenschneider believed, based on a conversation with Kristen Slaughter, DPT, he was misdiagnosed with carpal tunnel syndrome and may actually be suffering from a thoracic outlet syndrome. He said there was limited range of motion in his elbows. He said the condition of his shoulders, elbows and hands decreased his productivity and prevented him from fulfilling his responsibilities as a Special Agent. He said he was unable to successfully complete required firearms qualification on two occasions, and that he could not hold his arms in front of him to steady a weapon. He said his supervisor verbally counselled him concerning his productivity, but he was not given a written warning. He passed firearm qualifications. He was given an ergonomic chair and an ergonomic work station in July 2014 that helped to some extent, but did not resolve his difficulties.

Mr. Stuckenschneider believed CDCR's workers' compensation carrier prematurely terminated physical therapy and payment for necessary medications; he felt the absence of therapy was partially responsible for his current situation; he believed that if appropriate therapy and medication were reinstated, he could return to work. Mr. Stuckenschneider requested CalPERS authorize further therapy which "would take care of the problem."

Evaluation

19. Mr. Stuckenschneider suffered from a bilateral carpal tunnel syndrome. His condition resulted in pain and discomfort during his employment as a CDCR Special Agent. Even though his vocational activities aggravated his condition, he performed a full range of duties at the time of his retirement.

The competent medical evidence did not establish Mr. Stuckenschneider's bilateral carpal tunnel condition prevented him from performing any of the usual and customary duties of a CDCR Special Agent when he filed his application for an industrial disability retirement; instead, the competent medical evidence was to the contrary.

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 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 21151 provides in part:

(a) Any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, regardless of age or amount of service. . . .

4. Government Code section 21154 provides in part:

The application shall be made only (a) while the member is in state service . . . On receipt of an application for disability retirement of a member, other than a local safety member with the exception of a school safety member, the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for the performance of duty. . . .

5. Government Code section 21156 provides in part:

(a)(1) If the medical examination and other available information show . . . 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. . .

(2) In determining whether a member is eligible to retire for disability, the board . . . shall make a determination on the basis of competent medical opinion

Appellate Authority

6. “Incapacitated” means the applicant has a substantial inability to perform his usual duties. When an applicant can perform his 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.)

7. Mere difficulty in performing certain tasks is not enough to support a finding of disability. (*Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854; *Bowman v. Board of Administration* (1984) 155 Cal.App.3d 937.)

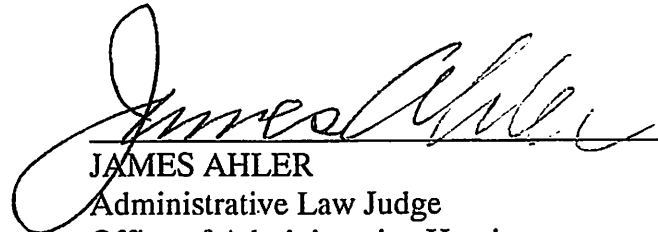
Cause Exists to Deny the Application

8. Cause exists to deny Mr. Stuckenschneider’s application for an industrial disability retirement. No competent medical evidence was offered to establish that Mr. Stuckenschneider was unable to perform the usual and customary duties of a CDCR Special Agent as a result of a bilateral carpal tunnel condition when Mr. Stuckenschneider filed his application for an industrial disability retirement.

ORDER

The application for an industrial disability retirement filed by Edward J. Stuckenschneider is denied.

DATED: October 11, 2016



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings