

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Of:

JEFFREY H. CADWELL,

Respondent,

and

CITY OF ARROYO GRANDE,

Respondent.

Case No. 2015-0499

OAH No. 2016040889

PROPOSED DECISION

This matter came before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in San Luis Obispo, California, on August 31, 2016.

Christopher Phillips, Senior Staff Attorney, represented Complainant Anthony Suine, Chief, Benefit Services Division, Board of Administration, California Public Employees' Retirement System (CalPERS).

Jeffrey H. Cadwell (Respondent) represented himself.

Karen Sisko (Sisko), Human Resources Manager, represented City of Arroyo Grande (Respondent City).

Complainant seeks to deny Respondent's disability retirement application on grounds that the medical evidence does not support his claim of disability based on his orthopedic (neck) condition. Respondents assert that Respondent is disabled for the performance of his duties.

Oral and documentary evidence and argument were received at the hearing and the matter was submitted for decision on August 31, 2016.

FACTUAL FINDINGS

1. Complainant filed the Statement of Issues in his official capacity.

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2. Respondent worked as a maintenance worker III for Respondent City. By virtue of his employment, Respondent is a local miscellaneous member of CalPERS.

3. a. As a maintenance worker III, the journey level of the classification, Respondent was responsible for a variety of maintenance and construction work for Respondent City, which included construction, repair and maintenance of parks, buildings, streets, sewage collection systems, and water distribution systems. He was responsible for operating a variety of maintenance vehicles and tools. For instance, some of the essential functions included paving and patching roads, repairing sidewalks, installing and repairing water and sewer lines, and trimming, planting, and removing trees. The work of maintenance workers involves repetitive heavy lifting and other physically strenuous work.

b. A functional analysis of the position states that lifting weight above the shoulder and lifting weight at waist or chest level are essential functions of the position. Lifting of more than 56 pounds above the shoulder is seldom required, but lifting weight at waist or chest level is often required.

4. On August 22, 2014, Respondent City filed a Disability Retirement Election Application on behalf of Respondent. In the application, Respondent City listed the specific disability as "neck" and the date the disability occurred as August 6, 2009. The application referred to a limitation of not lifting over 50 pounds and asserted that Respondent could not perform his job with such limitation.

5. On August 6, 2009, while working with a machine spreading seeds, Respondent tripped over a tree root and fell. The strap of the spreader machine was wrapped around his neck, and pulled on the neck as he fell.

6. Respondent immediately reported the injury to his supervisor, and was taken to Med Stop, Respondent City's workers' compensation clinic. He received treatment and returned to work on a light duty assignment.

7. Respondent continued to experience neck pain, which radiated down his arm, and was sent to see an orthopedic specialist, James B. Carr, M.D. (Carr). On September 9, 2009, Respondent underwent magnetic resonance imaging (MRI) of the neck, which showed moderate focal right disc protrusion at C6-7 and mild left C4-5 foraminal stenosis. Respondent received treatment from Dr. Carr, which included anti-inflammatory medication, narcotic medication, physical therapy, and steroid injections. On March 30, 2012, Dr. Carr performed a neck surgical procedure, an Anterior Cervical Decompression and Fusion C6-7.

8. After surgery, Respondent obtained some relief from his radiating arm pain, but continued to experience neck pain. He returned to work on a modified duty assignment on September 15, 2012, and worked until September 29, 2012, when use of a concrete saw aggravated the pain and numbness in his left upper extremity.

9. On November 28, 2012, Lee J. Piatek, M.D. (Piatek) performed a panel qualified medical evaluation in the then-pending workers' compensation matter. Dr. Piatek reviewed records, test results, and examined Respondent. Dr. Piatek noted a 25 percent decrease in cervical spine motion in all planes. Respondent was tender in the back of his neck. He had decreased sensation and dryness of the skin over the thumb, index, middle, and radial half of the ring finger on each hand. Tinel's nerve test was positive on the median nerve on the right and Phalen's test was bilaterally positive for median nerve compression. Dr. Piatek diagnosed status post C6-7 anterior spinal fusion for disc herniation and bilateral carpal tunnel syndrome, but concluded that Respondent's condition had not yet reached the point of maximal medical improvement.

10. Respondent underwent left hand carpal tunnel surgery on March 1, 2013 and right hand carpal tunnel surgery on September 6, 2013. On May 20, 2013, he returned to work with restrictions, and lasted less than one week.¹

11. On January 6, 2014, Dr. Carr concluded that Respondent's neck condition had reached a permanent and stationary condition. He listed the following objective findings on physical examination: "mild decreased [range of motion,] [decreased] sensation C7." (Exh. F, at p. 2.) His diagnoses were: degenerative disc disease C6-7, status post cervical fusion, cervical disc herniation, and radiculopathy. Dr. Carr concluded Respondent was cleared to return to his usual occupation, but noted "patient is cleared to lift up to 50 lbs [*sic*] do not use heavy, vibrating equipment." (*Id.*, at p. 5.) Respondent was permitted to "frequently" engage in reaching, bending, fingering, feeling, seeing, hearing and speaking, and to "occasionally" engage in climbing, balancing, stooping, kneeling, crouching, crawling, and twisting. (*Id.*, at p. 6.)

12. Respondent City concluded it did not have a position that would accommodate the restrictions imposed by Dr. Carr. As explained by Sisko and Respondent City's Public Works Director Geoffrey English, the work of maintenance workers involves repetitive heavy lifting and other physically strenuous work. All maintenance workers must be able to perform the duties of the position, and Respondent City does not have light duty assignments. The less strenuous tasks performed by maintenance workers involve project inspections, but such work is insufficient to regularly occupy one worker.

13. Respondent is under the care of Pain Management Specialists San Luis Obispo for treatment of pain associated with his neck, lower spine, and knee conditions.

14. a. On January 9, 2015, Dr. McAdams conducted an evaluation to ascertain whether Respondent was disabled by reason of his neck condition. Dr. McAdams obtained

¹ Although not received in evidence, the orthopedic surgeon contracted by CalPERS to examine Respondent, Brendan V. McAdams, M.D. (McAdams), reviewed several reports from the hand surgeon, Dr. Cima. As reported by Dr. McAdams, Dr. Cima removed all work restrictions in July 2013.

pertinent medical and other history, examined Respondent, and reviewed pertinent medical records.

b. Respondent's chief complaint at the time was intermittent neck pain on the left side. Respondent's hands were no longer symptomatic, and he did not wake up at night with symptoms. Respondent reported he no longer had numbness and he felt his strength was good. Respondent was receiving treatment from Dr. Leviton, who prescribed OxyContin for pain. Respondent reported he was receiving intermittent trigger point injections in the left side of his neck and in the area of the trapezius. Relief lasted for varying periods of time, up to a few months.

c. Dr. McAdams noted that Respondent did not appear to be in any distress and that he ambulated to the examination room without any evidence of discomfort. On physical examination, range of motion of the cervical spine revealed appropriate flexion toward his chest. Respondent was able to extend his neck forward to 30 degrees, which was somewhat restricted. He laterally rotated his neck 50 degrees to the left and 60 degrees to the right. He bent his neck 45 degrees in both directions. Respondent had full elevation of his arms to 180 degrees. He had excellent strength of the arms at 90 degrees of abduction. He had excellent strength in his wrist muscles. Dr. McAdams did not note any definitive sensory deficits in the upper extremities. Palpation of the cervical spine revealed no particular tenderness, but Respondent complained of discomfort when Dr. McAdams pressed into the trapezius area. Because Respondent did not appear to be in pain when he extended his neck, Dr. McAdams concluded that the apparent range of motion restriction was not due to any neck injury.

d. Dr. McAdams concluded that Respondent's neck surgery resulted in no neurological deficit, atrophy, or reduction in strength, and that there were no residual deficits or work restrictions from his carpal tunnel surgeries. With specific reference to the CalPERS criteria for disability, Dr. McAdams opined that Respondent was not incapacitated for the performance of his usual duties.

15. Dr. McAdams reviewed reports prepared by Dr. Carr. In McAdams's opinion, Dr. Carr did not set forth adequate objective, physical findings to support his opinion that Respondent was unable to lift in excess of 50 pounds.

16. The credible medical evidence and opinion establishes that Respondent is not incapacitated for the performance of duty by reason of an orthopedic neck condition. Dr. McAdams presented the only direct medical opinion and evidence of Respondent's condition, and was the only examiner who testified at the hearing. His testimony and other medical evidence submitted by him are sufficient to establish that Respondent is not disabled. Dr. Carr did not testify at the hearing, and his report is insufficient to establish that Respondent cannot perform the duties of his position. Of note, Dr. McAdams credibly testified that there is no basis for Dr. Carr's restriction on Respondent lifting more than 50 pounds and that Dr. Carr himself had not reported sufficient objective evidence to support the restriction.

LEGAL CONCLUSIONS

1. Government Code section 20026 defines the following relevant terms: “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.”

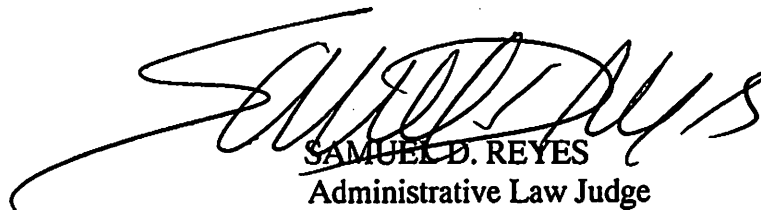
2. Government Code section 21156 provides, in pertinent part: “If the medical examination and other available information show to the satisfaction of the board . . . that the member in the state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability. . . .”

3. By reason of factual finding numbers 3 through 16, Respondent did not establish that he is incapacitated for the performance of duty within the meaning of Government Code sections 20026 and 21156. On the contrary, the competent medical evidence received at the hearing shows that he is not disabled by reason of an orthopedic condition related to his neck.

ORDER

The application for disability retirement of Jeffrey H. Cadwell is denied.

DATED: 9/30/16


SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings