

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

BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Statement of Issues  
Against:

CHERYL L. RAMSEY,

and

CITY OF EL MONTE,

Respondents.

Case No. 2014-0444

OAH No. 2016051094

**PROPOSED DECISION**

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on August 31, 2016, in Glendale. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

At the hearing, John Shipley, Senior Staff Attorney, represented the California Public Employees' Retirement System (PERS); and Cheryl L. Ramsey (respondent) participated by telephone, with the consent of PERS pursuant to Government Code section 11440.30. No appearance was made by respondent City of El Monte (City).

By an order dated September 29, 2016, the ALJ reopened the record for the parties to review law cited in the order and respond to certain questions posed. The events that occurred while the record was reopened are described in more detail in the ALJ's orders marked as exhibits A, F, and H. While the record was reopened, an appearance was made on behalf of the City by Richard A. Gonzalez, Esq., of Olivarez Madruga LLP.

On October 28, 2016, the record was reclosed and the matter resubmitted for decision.

This case involves respondent's application to PERS for a disability retirement arising from her employment with the City. As established by a preponderance of the evidence, respondent failed to meet her burden of proving she is substantially incapacitated from performing her former duties. While the City should have filed the application on her behalf under these unique circumstances, the fact that respondent did so on her own behalf is of no legal consequence.

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
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## FACTUAL FINDINGS

### *Parties and Jurisdiction*

1. Anthony Suine signed the Statement of Issues in his official capacity as Chief of PERS's Benefit Services Division.
2. Respondent was employed by the City as a Records Supervisor. By virtue of her employment, respondent is a local miscellaneous member of PERS subject to Government Code section 21150, and has the minimum service credit necessary to qualify for retirement.
3. On February 19, 2013, respondent signed and submitted an application for disability retirement (industrial disability), effective October 27, 2012. She stated her disability was on the basis of a psychological condition, including major depression, anxiety, lack of focus and stress. (Ex. 3, p. 2.)
4. PERS obtained medical records concerning respondent's condition from medical providers and referred her for an evaluation by a psychiatrist, who thereafter submitted a report to PERS containing his findings. After review of that information, PERS concluded respondent was not permanently disabled or incapacitated for performance of her duties with the City. (Ex. 4.)
5. By a letter dated March 7, 2014, PERS notified respondent that her application for a disability retirement had been denied. (Ex. 4.)
6. On March 29, 2014, respondent timely filed an appeal, requesting an administrative hearing to contest the denial of her disability retirement application. (Ex. 5.)

### *Background Information*

7. Respondent is a 51-year-old single woman with no children. She testified that through the ages of 18 and 36, she was almost always employed in full-time positions in the garment, medical and real estate industries. She also testified that she worked for the Los Angeles Police Department for five or six years during this time period. Respondent has indicated she was never fired from any position for cause, but may have been laid off from a few jobs when there was insufficient work; she was able to find new employment within a few months. (Ex. 7, p. 4.)
8. In December 2000, respondent was hired by the City as a records clerk. (Ex. 14, p. 11.) She was 36 years old when hired. (*Ibid.*) She testified that in 2002 she was promoted to the position of Records Supervisor. The City's Essential Functions Job Analysis for that position (ex. 8), as well as PERS's Physical Requirements of Position form completed by the City's Human Resources (HR) Director and respondent (ex. 9), were

presented. Those documents indicate respondent performed records management, clerical and administrative support duties for the City's Police Department. (Ex. 8, p. 1.) By her description, respondent did mostly data entry with some managerial duties. (Ex. 7, p. 9.)

9. Respondent testified that she liked her job and performed it very well. No evidence was presented indicating she had been disciplined or counseled by the City for misconduct while employed there.

10. A. Respondent testified that she had a conflict with another employee of the City's Police Department in 2008. She was vague in her description of what happened and no other evidence provides any detail.

B. On June 5, 2008, respondent was seen by licensed psychologist Cathy Goodman for a psychological fitness evaluation. The purpose of the evaluation was related to respondent's "fitness for duty for the position of Records Supervisor for the City." (Ex. 10, p. 1.) Dr. Goodman reviewed pertinent records, interviewed respondent for four hours and administered to her several psychological tests.

C. By a letter dated June 13, 2008, Dr. Goodman reported to the City's Police Chief that respondent "is not currently fit for duty for the position of Records Supervisor for the City." (Ex. 10, p. 2.) Dr. Goodman provided no other explanation or detail in her report.

D. Dr. Goodman was subsequently provided with additional information to consider and asked to conduct a follow-up evaluation of respondent. (Ex. 11.) On July 22, 2008, Dr. Goodman again met with respondent, interviewed her for two hours and administered to her several more psychological tests. (*Ibid.*)

E. By a letter dated July 24, 2008, Dr. Goodman reported to the City's Police Chief that respondent "is currently fit for duty for the position of Records Supervisor for the City." (Ex. 11, p. 2.) Dr. Goodman provided no other explanation or detail in her report, including why she had changed her prior recommendation.

### *Respondent's Sexual Harassment Complaint*

11. By respondent's description to others and her testimony during the hearing, she was subjected to sexual harassment on several occasions in the fall of 2010 by one high-ranking officer of the City's Police Department. Respondent has reported that on one occasion the officer put his hand on and rubbed her back in a sexual way while the two were standing in an office hallway; on another occasion, the officer held open a door for her in a way she believed allowed his arm to rub against her breast as she entered the room; on another occasion, when respondent removed a pen from her blouse, he said "ahhhhhh" while looking at her breast in a sexually-suggestive way. (Ex. 7, p. 6.) No evidence was presented regarding these events from sources other than respondent. In fact, the City refused to provide any information requested of it by PERS while this case has been pending.

12. According to respondent, she did not formally protest or complain about the officer's acts because she was afraid he would retaliate against her and cause her further harm, including more sexual harassment. (Ex. 7, p. 6; Ex. 14, p. 7.) Respondent did discuss these events with another high-ranking officer of the Police Department with whom she felt comfortable. (Ex. 7, p. 6.) The other officer tried to assist her, including helping her to avoid unnecessary contact with the officer in question. (*Ibid.*) However, in December 2010, the officer with whom she confided reported respondent's concerns to his supervisor, which triggered a formal investigation of respondent's sexual harassment complaint. (*Ibid.*)

13. A. Respondent was mortified when she learned the formal report had been made on her behalf. She had wanted to manage the situation herself and she was afraid she would alienate her colleagues when they found out about it. (Ex. 7, p. 6.)

B. By her report, once the formal complaint was made, respondent became extremely depressed, hopeless and fearful, lost focus and began having suicidal ideations. (Ex. 7, p. 6.) As a result of her psychological problems and symptoms, respondent was "taken off work by Dr. [William] Gillespie," a psychiatrist she had consulted with after the above-described events began. (Ex. 7, p. 6; Ex. 14, pp. 7-8.) It is unclear how long respondent remained "off work" by Dr. Gillespie's recommendation, although she indicates it was six weeks. (Ex. 14, pp. 7-8.)

C. Respondent was placed on administrative leave by the City on January 23, 2011. There is a conflict in the evidence whether at that time the City investigated the sexual harassment complaint that had been lodged on her behalf (ex. 7, p. 6.), or had advised respondent that her complaint had been deemed to be unfounded (ex. 14, p. 8). In any event, at some point the City advised respondent in 2011 that her complaint had been unfounded.

14. By respondent's description, she "fell apart" while she was on leave. She was admitted to Aurora Charter Oak Hospital on three occasions after expressing suicidal ideations. (Ex. 7, p. 6.) She became heavily reliant on prescription medications, including Xanax, and regularly saw Dr. Gillespie. (*Ibid.*) She later began treating with another psychiatrist in Dr. Gillespie's office, Dr. Wadie Alkhouri, who treated her through 2013.

15. A. While on her administrative leave, respondent was again sent to Dr. Goodman for a duty fitness evaluation. By a letter dated February 2, 2011, Dr. Goodman reported to the City's Police Chief that respondent "is not recommended as psychologically fit for the position of Records Supervisor for the City." (Ex. 12, p. 2.)

B. When requested by the City for clarification whether respondent could resume work with restrictions, Dr. Susan Saxe-Clifford, Ph.D., on behalf of Dr. Goodman, advised in a letter dated April 1, 2011, that a reasonable restriction would have been recommended had one been available; but the " 'unfit' recommendations suggest that no such limitation or accommodations would allow her to function adequately in the position. . . ." (*Id.* at p. 3.)

C. In May 2011, the City again asked for clarification regarding respondent's fitness. By a letter dated May 16, 2011, Dr. Saxe-Clifford advised, "Based on [respondent's] history and psychological status at the time of her evaluation, I do not see her functioning adequately within the municipal environment in any position." (*Ibid.*)

D. On August 18, 2011, Dr. Goodman re-evaluated respondent. She issued a report dated August 30, 2011, in which she concluded respondent "is not recommended as psychologically fit for the position of Records Supervisor for the City." (Ex. 13, p. 5.)

16. Meanwhile, respondent's treating psychiatrist recommended that she return to work. In a note dated July 13, 2011, Dr. Gillespie wrote, "At this time I feel that the patient is able and ready to return to work as of August 1, 2011, with the restriction of no direct or indirect contact with [the officer in question]." (Ex. 13, p. 4.) Dr. Gillespie was asked to clarify his work restriction. On August 10, 2011, Dr. Gillespie advised that respondent could resume work, with the only meaningful restriction being that she have no direct contact with the officer in question "without [a] 3rd party present." (*Ibid.*)

17. On June 27, 2011, respondent and the City held a meeting to begin an interactive process to discuss respondent's "disability" and the availability of a reasonable accommodation(s). (Ex. 12.) At all times respondent was assisted by one or more union representatives. Many of the above-described medical opinions and records were discussed. During the initial interactive process meeting, respondent advised City staff that "I can do my job," and that she did not agree with the opinion of Dr. Saxe-Clifford that she was unfit for her position. (*Id.* at p. 4.) However, while respondent stated her desire to return to work, she requested that she be able to do so without having any contact with the officer in question; in fact, she did not "even want to see this person." (*Id.* at p. 5.)

18. A. The final interactive process meeting was held on July 24, 2012. (Ex. 13.) By this time, Dr. Gillespie had issued a note, dated May 16, 2012, releasing respondent back to work with no restrictions; Aurora Behavioral Health Center issued a similar note, dated April 30, 2012. During the meeting, respondent again stated she wanted to return to work and believed she was capable of resuming her duties, with no restrictions. (*Id.* at p. 5.) However, because Dr. Saxe-Clifford maintained that respondent was psychologically unfit for duty, the City refused to allow respondent to resume her position as Records Supervisor.

B. The parties discussed alternative employment options as another reasonable accommodation, but were unable to reach an agreement. Respondent testified that almost all of the jobs offered were part-time, at lower pay, had rapidly approaching deadlines that could not be met, and she was unqualified for them. (See also ex. 14, p. 8.)

C. Because the City would not allow respondent to return to her position, and respondent felt the alternative positions offered to her were unsatisfactory or unrealistic, the interactive meeting process ended with the City advising respondent that another "option" would be for her to apply for a disability retirement. (Ex. 13, p. 8.) A week or two after the

meeting, the City's HR Director drafted a "Letter of Retirement" for respondent to sign if she was interested, with a retirement date of March 31, 2013, and promised to hold her former position vacant until that date. (*Id.* at p. 9.)

19. On October 26, 2012, respondent was advised by the City that she had been formally separated from employment with the City. (Ex. 14, p. 8.) This was not a termination. (*Ibid.*) According to respondent, this was "the worst day of my life." (Ex. 7, p. 7.) Because she had believed until that date she would be able to return to work, respondent was devastated emotionally by this news. Her emotional and psychological problems became exacerbated and she continued treating with Dr. Alkhouri. (*Ibid.*)

20. According to a summary of Dr. Alkhouri's records made by the psychiatrist to whom PERS referred respondent (discussed in more detail below), by July 2013 Dr. Alkhouri had diagnosed respondent with depressed mood, bi-polar disorder marked by mood swings, and opined that respondent was "substantially incapacitated from the performance of her usual duties and that this incapacitation is permanent." (*Id.* at pp. 10-11.) A summary of Dr. Alkhouri's notes from November 2012 through July 2013 are not revealing, other than that respondent continued taking medications during most of this period. (*Id.* at pp. 11-12.)

21. Although respondent was separated from employment by the City, she never filed a civil proceeding against the City or otherwise filed any legal action contesting her separation. A Worker's Compensation case she had filed settled at or about the time she was separated. (Ex. 7, p. 7.) She testified that case was closed after being paid a modest amount. It is abundantly clear that respondent filed her disability retirement application with PERS in February 2013 because the City refused to reinstate her to her former position based on the belief she was psychologically unfit for duty, and because during the interactive process City staff advised her filing such an application was her only remaining option. While on leave with the City before being separated, and while the current matter has been pending, respondent has steadfastly maintained that she can perform her duties with the City and wants to do so. In fact, the police officer who was the subject of her complaint is no longer employed by the City. (Ex. 7, p. 7.)

#### *PERS's Determination of Respondent's Psychological Condition*

22. After receipt of respondent's disability retirement application, PERS referred respondent to psychiatrist Perry Maloof, M.D., for an independent medical examination in the field of psychiatry. Dr. Maloof reviewed the aforementioned job descriptions for respondent's position (exs. 8 & 9), as well as some of respondent's medical records. As discussed above, Dr. Maloof summarized his review of some records from Drs. Gillespie and Alkhouri. (Ex. 7, pp. 8-12.)

23. A. On January 20, 2014, Dr. Maloof conducted his examination of respondent and issued a report of the same date. (Ex. 7.) During this examination, respondent was also administered a number of tests by psychologist Jared Maloof, Dr. Maloof's brother.

B. Dr. Maloof interviewed respondent at length concerning her background, employment with the City and psychological issues. His summary of that interview is provided in his report to PERS. (Ex. 7, pp. 1-8.) During the interview, respondent told Dr. Maloof she had been wrongfully separated from employment with the City and that she “was fully capable of performing her job duties but was not allowed to return to work.” (*Id.* at p. 7.) She told Dr. Maloof that she frequently requested the City to return her to her job. (*Ibid.*) She also said she “could do her job without difficulty,” and disagreed with the City’s opinion that she was disabled.<sup>1</sup> (*Ibid.*)

C. Based on his evaluation, Dr. Maloof diagnosed respondent with Depressive Disorder Not Otherwise Stated (NOS), in remission. He also diagnosed her with longstanding Mixed Personality Disorder, with avoidant and borderline features.

D. Dr. Maloof believed respondent’s mixed personality disorder may have started with an early childhood trauma and evolved thereafter. Dr. Maloof discounted respondent’s complaint of sexual harassment, because he believed she misperceived relatively innocuous interactions with others and exaggerated the potential dangers she faced from them. Dr. Maloof found it remarkable that despite her personality disorder, respondent had a longstanding good track record at her various jobs, including the City. However, Dr. Maloof explained that individuals with a mixed personality disorder, such as that he attributed to respondent, are extremely preoccupied with any level of criticism or rejection. When respondent’s complaints of sexual harassment were exposed at work and formally investigated, she became embarrassed and anxious. When her complaints were rejected by the City, respondent’s mood disorder became exacerbated, which led to a period of intense anxiety and depression. When her bad mood and embarrassment resolved and reduced, and “the dust settled” from her sexual harassment “experience,” Dr. Maloof found it significant that respondent wanted to return to work and resume her duties. (Ex. 7, pp. 15-16.) Dr. Maloof believed things have settled to the point where respondent has returned to her level of function before the sexual harassment complaint was lodged. (Ex. 7, p. 16.)

E. Dr. Maloof opined respondent would continue to have difficulty interacting with others because of the problems attendant with her personality disorder. However, those issues had not changed from the time she had started working for the City and he believed her difficulty in this area was basically in the same status as before her sexual harassment complaint. (Ex. 7, p. 16-17.) Although he believed respondent was temporarily incapacitated from performing her duties for periods of time, her mood problems, anxiety and depression have resolved over time to the present. (*Id.* at p. 17.) While he did not believe she could have ever performed all of her job duties because of her underlying mixed

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<sup>1</sup> After reading Dr. Maloof’s report, respondent sent PERS a letter on or about July 14, 2014, in which she summarized 55 statements in Dr. Maloof’s report which she believed were inaccurate. (Ex. 14.) None of the statements in this Factual Finding attributed to respondent were included in her list.



personality disorder, Dr. Maloof concluded that respondent's limitations did not render her substantially incapacitated from performing her usual job duties, since she had been able to effectively carry out her job before the events in question. (*Ibid.*)

24. At hearing, Dr. Maloof testified and affirmed the aforementioned findings from his report. He also clarified that he disagreed with Dr. Alkhouri's diagnosis of major depression and bi-polar disorder for respondent, testifying that her records are bereft of the sort of symptoms of severe depression and mania commonly associated with those disorders. Dr. Maloof also conceded he was not aware of respondent's difficulty at work in 2008, as he did not see any records concerning that situation and respondent did not tell him about it during their interview. However, Dr. Maloof testified he would need to see "many episodes" of conflicts and HR problems at work in order to change his opinion that respondent was not substantially incapacitated from performing her duties. The events in 2008 and 2010 were not enough to make that conclusion, especially given her longstanding employment history before she worked for the City.

#### *Evidence Presented by Respondent*

25. Respondent testified on her behalf. She offered no exhibits and presented no other witnesses. She explained many of the events detailed above concerning her background and employment with the City. She also described the events underlying her sexual harassment complaint. She is upset the City separated her from employment and believes she was targeted for such treatment because she made a sexual harassment complaint. While the City has told her she was psychologically unfit to return to her job, she testified the City has refused to provide her with details or an explanation how that conclusion was reached.

26. She is also critical of Dr. Maloof's opinions, mainly because she believes his report was inaccurate in 55 different areas. (See also ex. 14.)

27. Respondent testified that she still feels depressed, scared and anxious; and that she has headaches, diarrhea, and cannot sleep. She does not know if she is incapacitated. She filed her disability retirement application because the City told her that was the remaining option when the interactive process ended. She argues that if the City will not accept her back to her former position because she is psychologically unfit for duty, than she "should receive a disability retirement." (See also ex. 5, p. 2.)

### LEGAL CONCLUSIONS

1. Absent a statutory presumption, an applicant for a disability retirement has the burden of proving by a preponderance of the evidence that she is entitled to it. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327.)

2. The Public Employees Retirement Law (PERL), set forth at Government Code section 20000 et seq., is a comprehensive statutory scheme and the Legislature has expressly vested PERS with the sole authority to determine the type and level of benefits paid under the system. (§§ 21023-20125.) Because of the need for statewide uniformity in its application, the Board has been vested with the sole authority to determine who are employees and the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under the system. (*Metropolitan Water Dist. of Southern California v. Superior Court* (2004) 32 Cal.4th 491, 503–505; *City of Los Altos v. Board of Administration* (1978) 80 Cal.App.3d 1049, 1051.) Neither a member nor her employer has authority to enter into agreements or make decisions that bind PERS’s determinations as to what constitutes benefits under the system. (*Molina v. Board of Admin., California Public Employees’ Retirement System* (2011) 200 Cal.App.4th 53, 61–69.)

### *Incapacitated for Performance of Duty*

3. The statutory scheme for disability retirement requires a “disability of permanent or extended and uncertain duration, as determined . . . on the basis of competent medical opinion.” (Gov. Code, § 20026.) “If the medical examination and other available information show to the satisfaction of the board that the member . . . 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.” (Gov. Code, § 21156.) The term “incapacitated for performance of duty” has been defined to mean the “[s]ubstantial inability of the applicant to perform his usual duties.” (*Mansperger v. Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 876–877.)

4. An applicant does not qualify for a disability retirement when she can perform customary duties, even though doing so may sometimes be difficult or painful. (*Mansperger, supra*, 6 Cal.App.3d 873; *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854.) In *Hosford*, the court found that although sitting for long periods of time would probably bother the applicant’s back, which was the condition subject to his disability retirement application, that did not mean he was unable to do so, particularly since he could stop and exercise as needed. (*Hosford, supra*, 77 Cal.App.3d at p. 862.)

5. A. In this case, the only competent medical evidence presented established respondent is not substantially incapacitated from performing her former duties as a Records Supervisor with the City. Dr. Maloof’s report and testimony were credible, reasonable and well-supported. Respondent submitted no medical evidence indicating she is incapacitated. As the above-described appellate cases decided, respondent cannot be considered substantially incapacitated even though Dr. Maloof believes she has some underlying impairments that would prevent her from performing some of her former duties.

B. It is true that, in July 2013, Dr. Alkhouri diagnosed respondent with serious psychiatric disorders and had opined that she was substantially incapacitated permanently. However, Dr. Alkhouri’s report was not received, so the basis for his opinion is unknown.

More importantly, his opinion is substantially undercut by the fact that during the interactive process with the City, Dr. Gillespie, with whom Dr. Alkhouri worked, recommended respondent return to her position with the City with no restrictions. Respondent has consistently maintained since that time that she is able to perform her duties and wants to return to her position, which confounds the situation.

C. It is also true that the City refused to allow respondent to return to work on the basis of her being psychologically unfit for duty. The City has never clarified exactly what that means and generally has not provided any information in this case. Nonetheless, the City's statement that respondent is psychologically unfit to serve is not the same as a conclusion that she is permanently incapacitated substantially from performing her duties. In any event, as the above-cited law indicates, PERS is not bound by the decisions or agreements of its members or contracting agencies. In fact, it has been held that one government agency department's determination of an employee's eligibility for vocational rehabilitation does not have binding effect on another department of the same agency determining the employee's eligibility for a disability, because the eligibility criteria for those benefits are different. (*Lazan v. County of Riverside* (2006) 140 Cal.App.4th 453, 464.) Thus, just because the City refused to allow respondent to return to work does not mean PERS must conclude respondent is substantially incapacitated from performing her former duties, in the absence of competent medical evidence establishing the same.

6. Cause therefore exists to deny respondent's application for a disability retirement, because she failed to meet her burden of establishing by a preponderance of the evidence that she is permanently disabled or incapacitated for performance of her duties as a Records Supervisor with the City. (Factual Findings 1-27; Legal Conclusions 1-5.)

*Who Should Have Submitted Respondent's Disability Retirement Application?*

7. Respondent's employer, the City, refused to reinstate respondent to her former position as a Records Supervisor based on its conclusion that she was psychologically unfit to serve in that capacity. As discussed above, that conclusion did not necessarily equate to a finding that respondent was disabled for purposes of the PERL. During the interactive meeting process, an alternative position satisfactory to respondent was not identified. The City suggested to respondent that she had the "option" of submitting to PERS an application for a retirement disability. Respondent submitted the application, not the City.

8. A. The ALJ reopened the record to solicit argument from the parties concerning this situation, due to Government Code section 21153, which provides:

Notwithstanding any other provision of law, an employer may not separate because of disability a member otherwise eligible to retire for disability but shall apply for disability retirement of any member believed to be disabled, unless the member waives the right to retire for disability and elects to withdraw contributions or

to permit contributions to remain in the fund with rights to service retirement as provided in Section 20731.

B. In reviewing Government Code section 21153, one appellate court held:

[W]hen the employee is believed to be disabled, the employer “shall apply for disability retirement.” The word “shall” indicates a mandatory or ministerial duty. In other words, the employer has no authority to do otherwise. “[T]he Legislature has precluded an employer from terminating an employee because of medical disability if the employee would be otherwise eligible for disability retirement.” (*Haywood, supra*, 67 Cal.App.4th at p. 1305, 79 Cal.Rptr.2d 749; see also *Boyd v. City of Santa Ana* (1971) 6 Cal.3d 393, 398, 99 Cal.Rptr. 38, 491 P.2d 830.) Section 21153, therefore, imposes a ministerial duty to apply for disability retirement if the contingency exists, namely, if the employee is “believed to be disabled.”

(*Lazan v. County of Riverside* (2006) 140 Cal.App.4th 453, 460.)

C. However, as the City points out in its brief, *Lazan* involved a situation where the employee in question had first filed a disability application directly with her employer, the County of Riverside, which the employer denied. In this case, respondent filed the application with PERS on her own, which PERS accepted and reviewed on its merits. There is nothing in the record suggesting the City has opposed or resisted respondent’s efforts. In fact, the City provided respondent with some assistance, namely advising her of the disability application process, and helping her to complete PERS’s Physical Requirements of Position form.

D. The City also points out that a subsequent appellate decision appears to have qualified the *Lazan* case, “[b]ecause the record shows that [the applicant] applied for disability retirement on his own, it may appear that any duty the [employer] had to do so for him is obviated.” (*Gonzalez v. Department of Corrections and Rehabilitation*) (2011) 195 Cal.App.4th 89, 94, fn. 4.) Here, respondent successfully filed her application with PERS, which was reviewed and denied on its merits. According to *Gonzalez*, the fact respondent did so likely extinguished any duty the City had under Government Code section 21153.

E. Finally, Government Code section 21153 only requires an employer to “apply for disability retirement of any member believed to be disabled;” it does not require the employer to thereafter prosecute the case on behalf of the employee. As the City points out, since respondent filed her own disability application and was provided with a hearing to contest PERS’ denial of it, it would have made no difference whether she or the City filed the application in this case. Ultimately, it was respondent’s obligation to provide competent medical evidence at the hearing indicating she is now substantially incapacitated from performing her former duties. As concluded above, she failed to do so.

9. Under these unique circumstances, even though the City may have been initially obligated to apply for a disability retirement of respondent with PERS, the fact that respondent ended up doing so is of no consequence. This case only concerns whether respondent could prove she is entitled to a disability retirement under the PERL. Of course, as PERS points out in its brief, this case and the instant decision does not involve issues relative to respondent's employment rights and recourse against the City.

ORDER

Respondent Cheryl L. Ramsey's appeal is denied.

DATED: November 16, 2016

DocuSigned by:



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ERIC SAWYER  
Administrative Law Judge  
Office of Administrative Hearings