

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 Industrial
Disability Retirement of:

CHER A. LYNCH,

Respondent,

and

DEPARTMENT OF STATE HOSPITALS –
VACAVILLE,

Respondent.

Case No. 2015-1088

OAH No. 2016040868

PROPOSED DECISION

Administrative Law Judge Ed Washington, Office of Administrative Hearings, State of California, heard this matter on November 9, 2016, in Sacramento, California.

Senior Staff Attorney Charles H. Glauber represented the California Public Employees' Retirement System (CalPERS).

There was no appearance by or on behalf of respondent Cher A. Lynch (respondent) or respondent Department of State Hospitals – Vacaville (DSH).

Evidence was received, the record was closed, and the matter was submitted for decision on November 9, 2016.

ISSUE

Is respondent permanently and substantially incapacitated from performing her usual duties a Medical Technical Assistant, for DSH, on the basis of an orthopedic (right hand and elbow) condition?

FACTUAL FINDINGS

1. CalPERS properly served respondents with the Statement of Issues and Notice of Hearing in this matter. The hearing proceeded as a default hearing pursuant to Government Code section 11520.

Respondent's Industrial Disability Retirement Application

2. Respondent worked for DSH as a Medical Technical Assistant (MTA). On March 17, 2015, respondent applied for industrial disability retirement. In her application, respondent described her disability as "right hand, elbow (right) injury/pain and swelling." In response to the question on the application that asks how the disability occurred, respondent provided the following information: "While conducting my duties as a medical technical assistant inmate Bennett grabbed my right hand attempting to pry a cigarette lighter from my hand while pulling me through a food port injuring my right hand and right elbow." In the application, respondent described her limitations and preclusions due to her condition as "unable to defend myself against inmates" and "no lifting, forceful grasping, twisting keys and restraining violent inmates." In response to the question that asks how her condition affected her ability to perform her job, respondent wrote that she is "unable to carry heavy objects, drag heavy inmates, defend [her]self, lift heavy objects, [or engage in] forceful twisting." Respondent also specified in the application that her Qualified Medical Evaluator had "declared [her] permanent and stationary."

3. By letter dated July 28, 2015, CalPERS notified respondent that her industrial disability retirement application was denied. The letter also advised respondent of her right to appeal the denial. On August 19, 2015, respondent appealed from CalPERS's denial of her industrial disability retirement application.

Duties of a DSH MTA

4. As set forth in the Department of Mental Health, Vacaville Psychiatric Program, Duty Statement for Medical Technical Assistant (Psychiatric), an MTA performs tasks related to the medical or psychiatric care of inmate-patients, maintains order and supervises the conduct of inmate-patients, protects and maintains the safety of persons and property, and provides a basic level of general behavioral psychiatric nursing care to inmate-patients.

5. According to the Duty Statement, 40 percent of an MTA's time is devoted to the following: (a) observing inmate-patients' behaviors and physical and psychiatric conditions, which may include self-injurious or suicidal acts and assaultive behaviors; (b) providing first aid and/or medical and psychiatric interventions in all situations, including management of suicidal and assaultive behaviors; (c) providing assistance to all inmate-patients as necessary after a serious incident, which may include an assault or suicide; (d) reporting to the RN and documenting observations and interventions provided to inmate-patients; (e) preparing, administering, and documenting medications; (f) carrying out the

physician's orders per nursing policy and procedure within the required timeframe; (g) obtaining laboratory specimens and delivering them as needed; (h) monitoring and recording vital signs and informing the RN of the results; (i) assisting, supervising, and providing inmate-patient education to ensure that the activities of daily living are maintained; (j) obtaining report from outgoing shift on inmate-patients conditions and needs; (k) attending morning report and shift change reports; (l) providing one-on-one supervision to inmate-patients as assigned; (m) providing nursing care to inmate-patients in seclusion and restraints; (n) conducting 15-minute nursing rounds to observe inmate-patients; (o) identifying behaviors or acts that may result in patient injury or destruction of property; (p) document and inform the registered nurse of observations of inmate-patients who may need immediate attention or assessment; and (q) assess inmate-patients for pain and assist in management of pain and educate inmate-patients and families when appropriate about roles in managing pain and potential limitations and side effects of pain treatments.

6. Thirty percent of an MTA's time is devoted to (a) supervising and serving meals; (b) escorting inmate-patients to consultations, visits, and hearings; (c) conducting routine and random clothed and unclothed body searches, cell searches, cell extractions, cell entries, and contraband control; (d) responding to alarms, emergencies, and requests for assistance from all Vacaville psychiatric programs and CMF medical units; (e) applying mechanical restraints on inmate-patients as needed; (f) supervising inmate-patients in the corridor and yard; (g) monitoring group activities and responding to group incidents; (h) identifying health or safety hazards and reporting them to Senior MTAs; and (i) conducting and documenting nursing and fire-safety rounds.

7. The remaining 30 percent of an MTA's time is devoted to assisting clinical team members, attending treatment team conferences, supervising inmate activities and assisting other disciplines as outlined in care plans, communicating to the treatment team, assisting in the development of psychiatric treatment plans, and other duties as assigned.

CalPERS's Expert

8. Robert Henrichsen, M.D., testified at hearing. Dr. Henrichsen is a board-certified orthopedic surgeon and a certified Fellow of the American Academy of Orthopaedic Surgeons. On July 1, 2015, he performed an Independent Medical Evaluation (IME) on respondent. His evaluation included conducting a physical examination of respondent, and reviewing her job functions, medical records, and a video recording of respondent's activities. Dr. Henrichsen detailed his evaluation in a 22-page IME report.

9. As set forth in Dr. Henrichsen's IME report, respondent complained of "pain in the proximal forearm area, dorsum of the wrist, and radial aspects of the wrist." She also reported that she has "limited grip strength and wears an orthosis." Respondent also claimed that her symptoms increased with the "use of her hands and fingers with rotating and twisting."

10. After evaluating respondent, reviewing her medical records and surveillance video, Dr. Henrichsen diagnosed respondent as follows:

1. History of right wrist and hand sprain.
2. Symptoms not well supported by examination findings.
3. Failure to significantly improve after soft tissue injury.
4. Unexplained reduced sensation dorsal radial nerve distribution.
5. Volar ganglion cyst.

11. In the "Discussion" section of the IME report, Dr. Henrichsen opined that respondent's "situation does not make good medical sense." His IME report specifies that "overall ... respondent had a twisting and abrasion injury ... that produces a certain amount of temporary swelling and reduction of function, this long term reduction of function related to pain and reduced grip strength because of pain is not consistent with her injury." He noted that based upon his review of the medical records and examination, "no medical information is present" to support her claimed symptoms. He also specified that his review of the surveillance video "demonstrates [that respondent] functions normally without favoritism of either upper extremity." Dr. Henrichsen determined the medical records, physical examination, and other information, did not substantiate the level of symptoms respondent claimed. He opined that there were no specific job duties that respondent was unable to perform because of her claimed medical condition and that she was not substantially incapacitated for the performance of her job duties.

12. Dr. Henrichsen testified that, based upon his evaluation of respondent, there were no objective findings to support her claimed incapacity. He found that respondent had normal shoulder and elbow range of motion, and reasonably symmetrical circumference measurements in her arms and forearms. While respondent reported tenderness in the wrist area and some pain with resistance pronation and supination during his examination, there was no evidence of carpal instability or intrinsic muscle atrophy.

Discussion

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

LEGAL CONCLUSIONS

1. By reason of her employment, respondent is a member of CalPERS and eligible to apply for disability retirement under Government Code section 21151.¹

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.

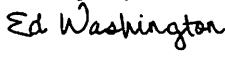
3. In *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876, the court interpreted the term “incapacity for performance of duty” as used in Government Code section 20026 (formerly section 21022) to mean “the *substantial* inability of the applicant to perform his usual duties.” (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 she applied, she was permanently and substantially incapacitated for the performance of her usual duties as a Medical Technical Assistant for the Department of State Hospitals – Vacaville. Respondent failed to offer such evidence. Consequently, her disability retirement application must be denied.

ORDER

The application of Cher A. Lynch for industrial disability retirement is DENIED.

DATED: December 8, 2016

DocuSigned by:

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ED WASHINGTON
Administrative Law Judge
Office of Administrative Hearings

¹ Government Code section 21151, subdivision (a), provides:

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.