ATTACHMENT A

THE PROPOSED DECISION
BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

HOSSEIN SOTOODEH-TEHRANI,
Respondent,

and

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,
Respondent.

Case No. 2016-0161
OAH No. 2016070799

PROPOSED DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), on July 12, 2017, in Los Angeles.

Charles H. Glauberman, Senior Staff Attorney, represented the California Public Employees’ Retirement System (CalPERS).

Hossein Sotoodeh-Tehrani (respondent) was present and represented himself.

No appearance was made by or on behalf of Metropolitan Water District of Southern California (MWD), which was served with notice of the hearing.

Oral and documentary evidence was received. Respondent submitted a three-page written statement which was not marked during the hearing, but is now hereby marked for identification as Exhibit R-6. The written statement was considered as argument. The record was closed and the matter was submitted for decision on July 12, 2017.

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ISSUE

Whether, at the time of his application for disability retirement, respondent was permanently disabled or substantially incapacitated from performance of his duties as a Senior Information Technology (IT) Infrastructure Administrator for MWD on the basis of an orthopedic (neck) condition.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Anthony Suine made and filed the Statement of Issues in his official capacity as the Chief of the Benefit Services Division of CalPERS.

2. Respondent was employed by MWD for 22 years. By virtue of his employment, respondent is a local miscellaneous member of CalPERS subject to Government Code section 21150. Respondent has the minimum service credit necessary to qualify for retirement.

3. On January 9, 2015, respondent signed an application for service retirement. He retired for service effective April 16, 2015, and has been receiving his service retirement allowance from that date.

4. On May 11, 2015, respondent signed an application for disability retirement (application). Respondent claimed disability on the basis of "neck, back, shoulder and pain all over body" conditions, and that the disability occurred "on or around Jan 2015." (Exh. 3.)

5. (A) By letter dated October 22, 2015, CalPERS notified respondent that the application was denied. The basis for the denial was explained in the letter as follows:

We reviewed all of the medical evidence submitted. Our review included the reports prepared by Payam Vahedifar, M.D. and Hose Kim, M.D. Based on the evidence in those reports, we have determined your orthopedic (neck) condition is not disabling. As a result, we find you are not substantially incapacitated from the performance of your job duties as a Senior IT Infrastructure Administrator with the [MWD]. Therefore, we regret to inform you that your application for disability retirement is denied.

Since medical evidence submitted by you does not support disabling back, shoulder and pain all over body conditions, your allegations of disability due to your back, shoulder and pain all
over body conditions were not considered in our evaluation of your disability retirement application. (Exh. 4.)

(B) The October 22, 2015 letter advised respondent: "Although your disability retirement application has been denied, you will continue to receive your service retirement benefits." (Exh. 4.) The letter also notified respondent that he could appeal the denial decision by filing a written appeal with CalPERS within 30 days, and that he had the right to request a review of the medical reports that CalPERS relied on in making the denial decision.

6. By letter dated November 14, 2015, respondent timely appealed the denial of the application and requested a review of the medical reports that were the basis of CalPERS's denial decision. The Statement of Issues was filed on June 14, 2016.

Respondent's Job Duties

7. At the time he applied for disability retirement, respondent was employed by MWD as a Senior IT Infrastructure Administrator. According to MWD, the physical demands of the position are as follows: "The work is sedentary. Typically the employee may sit comfortably to do the work. However, there may be some walking, standing, bending, carrying of light items such as paper[,] books, or small parts[,] driving an automobile, etc. No special physical demands are required to perform the work." (Exh. 10.) Further, according to MWD, the physical requirements of the position include "frequent" sitting, keyboard use, and mouse use, and "occasional" standing, walking, and simple grasping. (Exhs. 9, R-5.) The activities indicated as "never" occurring for the position include crawling, kneeling, climbing, squatting, bending (neck and waist), twisting (neck and waist), reaching (above and below shoulder), pushing and pulling, and lifting and carrying. (Id.)

8. Respondent contends that MWD's description of his job duties, physical demands, and physical requirements, do not accurately reflect the type of work he was performing. Respondent denies that his job was sedentary. To the contrary, respondent contends that performing his job duties required him to, for example, crawl under tables, climb ladders, climb up in the ceiling to do wiring work, and lift and carry computer and audio/video equipment. Respondent contends that the "physical requirements" form was completed by MWD Team Manager Ellen Jackson, who was not respondent's supervisor.

9. Respondent presented the testimony of his former supervisor, Shahram ("Ron") Ardalan. Ardalan was employed by MWD for 25 years as a Unit Manager before retiring in 2015. Ardalan was respondent's supervisor from 2003 to 2015. Ardalan testified credibly at this hearing that, during the period he was respondent's supervisor, respondent's job duties were to manage a team of consultants to deploy computer software; create images to be copied to all computers; manage a project to install audio and video equipment for the Board's voting system and live streaming of the MWD Board meetings; and operate the audio and video equipment during the Board meetings, which were held in five separate
meeting rooms. On the Board and Committee meeting days, respondent had to go from room to room, climb ladders, crawl under tables, etc. Respondent also had to interact with the Board members, members of the public, and government and political officials who attended the meetings. Ardalan testified it was respondent's responsibility to make sure there were "no glitches" during the meetings. Respondent was required to be present for the duration of the Board meetings, which sometimes ran late into the night.

10. (A) In a Job Audit Questionnaire completed by respondent in 2011, he described his job duties, in part, as follows: "The major reason for my job is to make sure all of the audio/video & information technology equipments [sic] in the board and committee rooms are operational and that we use the most cost effective method of running our day to day activities." (Exh. R-1.) In the Job Audit Questionnaire, respondent's duties related to operating and maintaining the equipment in the meeting rooms accounted for approximately one-third of his time (i.e., 30 percent for "[t]echnical IT [c]ontact with public officials and members of the public" and five percent for "[a]dminister and maintain server operation for Board of Directors Voting servers & media streaming servers." (Exh. R-1.)

(B) The Job Audit Questionnaire also included a physical demands checklist. Respondent indicated the activities that occurred "frequently" included standing, walking, sitting, using hands to finger, handle, or feel, and fine manipulation. He identified the activities that occurred "occasionally" as including simple grasping, reaching with hands and arms, reaching above shoulder, climbing, balancing, kneeling, crouching, and crawling. He identified stooping as an activity that did not occur.

11. (A) Ardalan completed a Supervisor Review of Job Audit Questionnaire in 2012 relating to the Job Audit Questionnaire by respondent. In the Supervisor Review, Ardalan reported that respondent's job was to manage the audio/video and IT systems in the Board and Committee meeting rooms at MWD's headquarters facility; coordinate all maintenance related activities including contract administration for different components of the Board and Committee rooms, specifically for audio visual maintenance services and Web streaming services; facilitate Board, Committee, and other meetings and coordinate with appropriate parties such as the Executive Secretary of the Board of Directors; and coordinate with representatives from a variety of outside agencies regarding the use of MWD's facilities by those outside entities. (Exh. R-1.)

(B) In the Supervisor Review, Ardalan reported that 30 percent of respondent's time was spent on "operations," which included coordinating all audio visual and IT related activities on Board and Committee meeting days; administering the eight servers and 40 work stations related to the voting system used during Board and Committee meetings; and performing a complete system diagnostics before and after all meetings. Ardalan reported that 10 percent of respondent's time was spent on "maintenance," which involved overseeing the maintenance activities surrounding the IT and audio/visual system and components, and the official Board voting system, used in the meeting rooms. The remainder of respondent's time involved activities related to coordination and collaboration (30 percent), contract administration (20 percent), and planning (10 percent).
12. Thus, it was established that respondent spent approximately one-third of his time performing duties that required him to occasionally reach with his hands and arms, reach above his shoulders, climb, balance, kneel, crouch, and crawl.

Medical Evaluation by Dr. Kim

13. At the request of CalPERS, Hose Kim, M.D., performed an independent medical evaluation in orthopedics of respondent on September 22, 2015. The purpose of the evaluation was to determine whether respondent was substantially incapacitated for the performance of his duties as a Senior IT Infrastructure Administrator for MWD in order to qualify for disability retirement based on his orthopedic condition.

14. Dr. Kim graduated from medical school in 1985. He has been licensed in California as a physician and surgeon since 1986. He completed his orthopedic surgery residency at Los Angeles County-USC Medical Center in 1990. He is board certified in orthopedic surgery. Dr. Kim has been in private practice in orthopedic surgery since February 1991. As an orthopedic surgeon, Dr. Kim specializes in muscular skeletal disorders. He has extensive experience in industrial medicine, and has been a consultant for many industrial clinics and insurance companies. Dr. Kim is familiar with the CalPERS requirements for disability retirement. Dr. Kim estimated that he has conducted approximately 50 to 100 medical evaluations for CalPERS.

15. Dr. Kim's orthopedic medical evaluation of respondent was based on his review of records provided to him by CalPERS, including medical records and job description information (summarized in Finding 7 above), and his physical examination of respondent on September 22, 2015. Dr. Kim prepared a written report of his findings and opinions. Dr. Kim testified credibly at this hearing regarding his orthopedic evaluation of respondent.

16. (A) Dr. Kim's written report summarized the medical records he reviewed, which included a new patient note and progress notes by Payam Vahedifar, M.D., and MRI reports for respondent's right knee and lumbar spine from June 2015.

(B) Respondent presented as a new patient to Dr. Vahedifar on November 20, 2014, and complained of ongoing neck pain. Dr. Vahedifar noted that the complaint was "related to injury" and that respondent's past treatment for the pain included a trigger injection and taking Norco and Soma. (Exh. 8, p. 10.) Dr. Vahedifar diagnosed respondent with torticollis, which is a condition where the neck muscles contract and get stuck in one position and cause the person's head to tilt to one side. Dr. Vahedifar's treatment, according to the medical records, included one Botox injection, medications (Norco, Soma, and Ibuprofen), and physical therapy.

(C) Dr. Kim's review of the medical records also noted that, in May 2015, respondent reported new complaints of pain in his right knee and lower back and extremities. Dr. Vahedifar ordered MRIs of respondent's right knee and lumbar spine, which were
completed in June 2015. Dr. Kim noted that the MRI report for the right knee indicated there was "no evidence of meniscal, ligamentous or tendon tear or acute bony injury." (Exh. 8, p. 13.) The MRI report for the lumbar spine reported mild/minimal disc protrusion and disc bulge conditions "without significant stenosis." (Exh. 8, p. 12.).

17. Dr. Kim performed a physical examination of respondent on September 22, 2015. Dr. Kim spent one hour of face-to-face time with respondent for the examination. During the interview with Dr. Kim, respondent stated that he began his employment with MWD in 1995, and he worked as a senior IT analyst until he retired as of January 28, 2015. Respondent had left rotator cuff surgery in 2010.

18. At the time of the September 22, 2015 examination, respondent complained of pain in three areas: his neck, lower back and right knee. First, respondent told Dr. Kim that he experienced ongoing neck pain that radiated to the bilateral shoulders for the last three to four years. He denied having sustained a specific injury or traumatic event involving his neck, but reported developing a severe problem for which he sought medical attention and received a Botox injection. Second, respondent complained of a six-month history of lower back pain. He denied having a recent lower back injury, but disclosed a history of neck and back injury due to a non-work-related motor vehicle accident in 2007 in which his vehicle was rear-ended by another vehicle. He received medical treatment for his injuries but was left with some residual pain. Finally, respondent complained of right knee pain of three months' duration but denied having a specific injury or traumatic event involving the right knee.

19. (A) During the September 22, 2015 examination, Dr. Kim observed that respondent presented as a well-developed and well-nourished male who was alert and in no acute distress. Dr. Kim observed that respondent rose slowly from the examination table, he ambulated freely about the room with a normal gait, and he did not use any assistive devices. Respondent was able to stand on his heels and toes without difficulty.

(B) Dr. Kim examined respondent's neck for any abnormalities and contraction of muscles, and he observed how respondent sat and moved. Respondent was normal. His neck was straight, symmetrical and without scars. Respondent complained of tenderness to palpation on the side of his neck and the bilateral trapezius musculature. Dr. Kim noted there was tightness of the bilateral trapezius muscles, but the stiffness was symmetric. Dr. Kim evaluated respondent's range of motion in his neck and found that respondent's range of motion was less than average for his age group (he is 51-years-old) but symmetric; if there was nerve compression, then the range of motion would be asymmetric.

(C) Dr. Kim examined respondent's shoulders and upper arms and found there was normal alignment without asymmetry. The arms looked normal, with the left side looking the same as the right side. Dr. Kim saw no evidence of muscle atrophy or soft tissue swelling. There was no tenderness, guarding, or crepitus on range of motion.
(D) Dr. Kim examined respondent's lower back. Dr. Kim noted there was normal lumbar lordosis (curvature of the back), the pelvis was level in the standing position, and there was no evidence of tenderness or muscle spasm. Respondent's range of motion for his lower back was within normal limits for his age group. Dr. Kim examined respondent's knees and forelegs and found they were functioning within normal limits. There was normal alignment without obvious deformity or defect. There was no obvious muscle atrophy or soft tissue swelling. Range of motion was within normal limits.

20. (A) Based on the findings of his evaluation, Dr. Kim’s opined that there are no specific job duties that respondent is unable to perform due to any orthopedic condition. Dr. Kim disagreed with Dr. Vahedifar’s diagnosis of cervical torticollis. Despite respondent's complaints of neck pain, Dr. Kim did not find clinical evidence of torticollis. There was no severe contracture of the neck; respondent's neck was straight without being fixed to one side, in flexion, with the chin rotated away from the painful side. Although there was tightness of the bilateral trapezius muscles, the pain was bilateral and symmetric. There was no tilting or asymmetry of respondent's neck in one direction or another. Dr. Kim reviewed the job description for respondent's position, which indicated his job-related duties were largely sedentary and he spent three to six hours in the same position. Dr. Kim's examination found that respondent was able to move around and change positions at will.

(B) In his written report, Dr. Kim noted that he was requested to examine respondent with regard to his cervical spine (i.e., neck) condition but, during the examination, respondent also complained of pain in his lower back and right knee. Since both of those conditions started after respondent retired on January 28, 2015, Dr. Kim opined that the lower back and right knee conditions are not related to his employment with MWD and are not labor-disabling.

21. Based on the findings of his evaluation, Dr. Kim’s opinion is that respondent is not substantially incapacitated for the performance of his job duties. Respondent's neck complaints are not considered to be labor-disabling, and there is no basis of any disability from the neck complaints. Dr. Kim observed respondent moving around fine and sitting comfortably throughout the examination, despite his complaints of lower back pain. The examination of the lower back and right knee were unremarkable. Dr. Kim noted that the MRI scan of the right knee demonstrated no obvious tear of the meniscus, and the MRI scan of the lumbar spine demonstrated no acute process such as disc herniation with neural compression.

22. As stated in his written report, Dr. Kim found that respondent "cooperated with the examination and seemed to have put forth his best effort for the most part, except for slight voluntary limitation of range of motion to his cervical spine." (Exh. 8, p. 9.) In Dr. Kim's opinion, respondent's "subjective complaints are not substantiated by the objective findings." (Id.)

23. At the hearing, Dr. Kim testified that his opinions would not change even with evidence of respondent's job duties that were beyond MWD's job description, physical
requirements, and physical demands of respondent's position (summarized in Finding 7, above) that were provided to him. Dr. Kim opined that the objective findings of his examination of respondent did not indicate respondent was physically unable to perform activities such as climbing a ladder or crawling under a table.

24. At the hearing, Dr. Kim reviewed an MRI report for respondent's cervical spine dated October 22, 2014. The MRI report noted: "Compared to the prior exam dated 10/16/2010, there is interval slight worsening of disc space narrowing at C6-7 level. No other significant change is seen." (Exh. R-4.) Dr. Kim testified that the objective findings of his physical examination of respondent are consistent with this MRI finding. According to Dr. Kim, the narrowing of disc space is part of the degenerative process; people generally lose water between disc spaces as they age. Dr. Kim testified that in any MRI of respondent's age group, there will be degenerative narrowing of disc space. Dr. Kim agreed with the MRI finding of degenerative disc disease at the C6-7 level, but opined that a person can live and function normally with that condition.

Testimony of Payam Vahedifar, M.D.

25. Respondent contends that his history of medical conditions related to his neck, back, shoulders, knees and heart, substantially incapacitated him in the performance of his normal job duties which he claims, in turn, forced him into retirement.

26. Payam Vahedifar, M.D., testified at this hearing on respondent's behalf. Dr. Vahedifar has been licensed in California as a physician for 20 years. His areas of practice are pain medicine and physical medicine and rehabilitation. Dr. Vahedifar is not a surgeon, but he completed a spine fellowship at Cedars-Sinai. Dr. Vahedifar is not familiar with the CalPERS requirements for disability retirement.

27. Dr. Vahedifar has been treating respondent since November 2014. Dr. Vahedifar testified that he has treated respondent's torticollis with Botox, which stopped the stiffness of the neck muscles; however, respondent continued to complain of neck pain. Dr. Vahedifar's opinion is that the underlying cause of torticollis is cervical degeneration. Dr. Vahedifar testified that the lower part of respondent's back is not aligned due to disc bulging. He treated that condition with epidurals but had to stop the epidurals when respondent began taking blood thinners after his heart attack 18 months ago. Dr. Vahedifar testified that respondent has knee degeneration of the meniscus; the degeneration is more than just age-related arthritis and might be a sign of inflammatory arthritis. He also testified that respondent has muscle weakness that he is treating with steroids. Dr. Vahedifar noted that respondent had rotator cuff surgery in 2010 to repair his shoulder.

28. Dr. Vahedifar testified that he is informed that respondent did computer IT work. Respondent described his duties as involving crawling under desks, climbing ladders, climbing up to the ceiling to do wiring work, bending, reaching, moving his head upward and downward, and working on computer servers. Dr. Vahedifar's opinion is that respondent is physically unable to perform those types of duties because of his neck, lower back, and knee
conditions. For example, Dr. Vahedifar's opinion is that respondent is physically unable to crawl under a table or climb a ladder, and not merely that it is painful for him to do so. Dr. Vahedifar testified that he reviewed Dr. Kim's written report and believes that Dr. Kim's opinion relies on an incorrect job description that respondent's job was sedentary.

29. Dr. Vahedifar's expert testimony was not sufficient to refute Dr. Kim's expert testimony that respondent is not "substantially incapacitated" due to an orthopedic (neck) condition. Dr. Kim's opinions were substantiated by objective evidence while Dr. Vahedifar's opinions were not. For example, Dr. Vahedifar testified that respondent suffered from knee degeneration in the meniscus. But the MRI report for the right knee completed in June 2015 indicated there was no evidence of meniscal, ligamentous or tendon tear or acute bony injury. Dr. Kim observed respondent's knees appeared normal and properly aligned, with no obvious deformity, defect, muscle atrophy or soft tissue swelling, and range of motion was within normal limits. Dr. Vahedifar testified that respondent suffered from cervical degeneration. However, Dr. Kim's examination of respondent revealed no evidence of cervical degeneration or torticollis. Dr. Kim observed respondent's neck to be straight and symmetrical. Dr. Kim also found that respondent’s shoulders and upper arms were in normal alignment and symmetrical. There was no evidence of muscle atrophy or soft tissue swelling. Finally, the MRI report of the lumbar spine showed mild or minimal disc protrusion and disc bulge without significant stenosis.

30. Dr. Kim's opinions are entitled to more weight than Dr. Vahedifar's opinions based on each doctor's medical specialty. Dr. Kim is an orthopedic surgeon with expertise in muscular skeletal disorders. Dr. Vahedifar specializes in pain management, and physical medicine and rehabilitation, but is not a surgeon. Dr. Kim's opinion is entitled to more weight in assessing respondent's application for disability retirement on the basis of an orthopedic (neck) condition.

Respondent's Other Contentions

31. Respondent contends that Dr. Kim did not spend enough time to conduct the physical examination. He disputes that Dr. Kim spent one hour of face-to-face time with him, as indicated in Dr. Kim's report. Respondent contends that Dr. Kim spent only 20 minutes with him for the examination because Dr. Kim was repeatedly interrupted during the examination by telephone calls. To support this contention, respondent presented the testimony of his brother, Hassan Sotoodeh-Tehrani (Hassan). Hassan testified that he accompanied respondent to the appointment with Dr. Kim and was present in the examination room. Hassan testified that, during the examination, Dr. Kim was interrupted several times by telephone calls for which he left the examination room. Dr. Kim testified he did not recall whether respondent's brother was present in the room during his examination of respondent, since the examination occurred nearly two years ago. Dr. Kim testified that CalPERS requires physicians to submit their written reports within two weeks of the medical evaluation. Dr. Kim testified that he spent adequate time with respondent to complete the medical evaluation.
32. Respondent also challenges Dr. Kim's competence to render a medical opinion in this case. Respondent presented printouts of Case Summaries from the Los Angeles Superior Court website related to six medical malpractice cases where Dr. Kim was listed as a defendant. The cases range in date from 1993 to 2002. According to the Case Summaries, none of the cases resulted in any judgment against Dr. Kim, and all of the cases were ultimately dismissed. In addition, respondent also presented a printout from the California Department of Industrial Relations, Division of Workers' Compensation (DWC) website of a "Disciplined physicians list," which indicates Dr. Kim was placed on QME\(^1\) probation by the DWC from March 30, 2010, through July 15, 2011. The DWC probation does not invalidate Dr. Kim's September 22, 2015 evaluation in this case. Dr. Kim performed the examination of respondent at the request of CalPERS, which is a separate and distinct entity from DWC. More importantly, the preponderance of the evidence does not support a finding that Dr. Kim's observations, examination, and objective findings were not valid and reliable. The DWC is not the state agency responsible for the licensing of physicians in California; that responsibility is vested in the California Medical Board. Therefore, Dr. Kim was competent to perform the September 22, 2015 medical evaluation of respondent.

LEGAL CONCLUSIONS

1. Government Code section 21150, subdivision (a) provides:

"Any member incapacitated for the performance of duty shall be retired for disability pursuant to this chapter if he or she is credited with five years of state service, regardless of age, unless the person has elected to become subject to Section 21076 or Section 21077."

2. Government Code section 20026 states, in pertinent part:

"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. Government Code section 21154 provides, in pertinent part:

"On receipt of an application for disability retirement of a member, . . . the board shall, or of its own motion 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."

\(^1\) QME stands for Qualified Medical Evaluator.
4. Government Code section 21156 states, 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 . . . ."

5. Respondent has the burden of proving entitlement to disability retirement. (Harmon v. Board of Retirement of San Mateo County (1976) 62 Cal.App.3d 689, 691; Rau v. Sacramento County Retirement Board (1966) 247 Cal.App.3d 234, 238.) In state administrative hearings, unless indicated otherwise, the standard of proof is "persuasion by a preponderance of the evidence." (McCoy v. Board of Retirement (1986) 183 Cal.App.3d 1044, 1051.)

6. Thus, to establish entitlement to disability retirement, an employee must show that he or she is "incapacitated for the performance of duty," which courts have interpreted to mean a "substantial inability" to perform his or her "usual duties." (Mansperger v. Public Employees Retirement System (1970) 6 Cal.App.3d 873, 876.) Mere difficulty in performing certain tasks is not enough to support a finding of disability. (Hosford v. Board of Administration of the Public Employees' Retirement System (1978) 77 Cal.App.3d 854, 860-862.) When an applicant can perform his or her customary duties, even though doing so may sometimes be difficult or painful, the applicant is not "incapacitated" and does not qualify for a disability retirement. (Hosford, supra; Mansperger, supra, at p. 876-878.)

7. In this case, the testimony of CalPERS's expert, Dr. Kim, was better supported by objective evidence and, therefore, more persuasive than the testimony of respondent's physician, Dr. Vahedifar. In addition, Dr. Kim's educational and professional background, as well as his familiarity with the CalPERS requirements for disability retirement, also contributed to the persuasiveness of his opinions. Some aspects of respondent's job duties involved physical activity, such as crawling under tables, climbing ladders, etc., but those physical activities were required for only one-third of his time, and by respondent's own account, were required only occasionally. Dr. Kim's objective findings of respondent's orthopedic condition, such as range of motion within normal limits for his neck, shoulders, arms, lower back, and knees and legs, support his conclusion that respondent was not disabled from performing the occasional physical activities of his position.

8. Based on the foregoing, the preponderance of the evidence supports CalPERS's determination that respondent, at the time he applied for disability retirement, was not substantially incapacitated from performance of his usual and customary duties as a Senior IT Infrastructure Administrator based on his orthopedic (neck) condition. Respondent failed to establish, by a preponderance of the evidence, his claim of disability on the basis of "lower back, shoulder, and pain all over body conditions." (Factual Findings 1-32; Legal Conclusions 1-7.)
ORDER

Respondent Hossein Sotoodeh-Tehrani's appeal of CalPERS's decision to deny his application for disability retirement is denied.

Dated: August 8, 2017

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings