ATTACHMENT E

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

In the Matter of the Application for Industrial Disability Retirement of:

LINDA MOSLEY,
Respondent,

and

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,
HIGH DESERT STATE PRISON,
Respondent.

Case No. 2015-0019
OAH No. 2016050971

PROPOSED DECISION


Elizabeth Yelland, Senior Staff counsel, represented complainant California Public Employees’ Retirement System (CalPERS). No appearance was made on behalf of California Department of Corrections and Rehabilitation.

Linda Mosley (respondent Mosley), nor any representative on her behalf, appeared at the hearing. Consequently, this matter proceeded as a default hearing pursuant to Government Code section 11520.

The matter was submitted on May 11, 2017.

FACTUAL FINDINGS

1. Diane Alsup, Interim Chief, Benefits Services Division, CalPERS, made and filed the statement of issues in her official capacity.
2. Respondent Mosley was employed by respondent California Department of Corrections and Rehabilitation, High Desert State Prison (Department of Corrections). At the time respondent Mosley filed her application for industrial disability retirement, she was employed as a Psychologist Clinical. By virtue of her employment, respondent Mosley is a state safety member of CalPERS subject to Government Code section 21151.

3. Respondent Mosley retired for service effective November 1, 2012, and has been receiving her retirement benefit allowance since that date.

4. On August 28, 2013, respondent Mosley signed an application for service retirement pending industrial disability retirement. She claimed industrial disability on the basis of psychological (chronic fatigue, PTSD) conditions.

5. On September 29, 2014, CalPERS notified respondent Mosley of CalPERS' determination that she was not permanently disabled or incapacitated for the performance of her duties as a Psychologist Clinical at the time her application for industrial disability retirement was filed.

6. On October 27, 2014, respondent Mosley filed a timely appeal, and this hearing ensued.

7. On August 9, 2014, Maria Acenas, M.D., performed a Psychiatric Independent Medical Evaluation (IME) of respondent Mosley. Dr. Acenas obtained a detailed history, performed a medical examination, and reviewed respondent Mosley's medical records and prepared an IME report.

8. Dr. Acenas diagnosed respondent Mosley with Post Traumatic Stress Disorder and major depression. However, Dr. Acenas concluded that there are no specific duties that respondent Mosley is unable to perform because of a physical or mental condition, and that she is capable of performing the duties of a clinical psychologist. Dr. Acenas concluded that respondent Mosley was not substantially incapacitated for the performance of her duties. Dr. Acenas testified at hearing regarding her examination and IME report, and confirmed that in her medical opinion, respondent Mosley is not substantially incapacitated, and not disabled.

9. Respondent Mosley did not appear at hearing and she presented no evidence to rebut Dr. Acenas's IME report.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The applicant for a benefit has the burden of proof to establish the right to the claimed benefit; the standard of proof is a preponderance of the evidence. (McCoy v. Board of Retirement (1986) 183 Cal.App.3d 1044, 1051; Evid. Code, § 115.)
Applicable Law

2. By virtue of her employment, respondent is a state safety member of CalPERS subject to Government Code sections 21151. Eligible CalPERS members, who are incapacitated physically or mentally for the performance of duty, shall be retired for disability. (Gov. Code, §§ 21151 to 21154.)

3. Section 20026 provides:

“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, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion.

4. Section 21151 provides:

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

(b) This section also applies to local miscellaneous members if the contracting agency employing those members elects to be subject to this section by amendment to its contract.

5. Section 21152 provides, in relevant part:

Application to the board for retirement of a member for disability may be made by:

[c] . . . [c]

(c) The governing body, or an official designated by the governing body, of the contracting agency, if the member is an employee of a contracting agency.

6. Section 21153 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

1 All further statutory references shall be to the Government Code unless otherwise specified.
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.

7. Section 21154 provides:

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, ... 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....

8. Section 21156, subdivision (a)(1), provides in 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. ...

Eligibility for Disability Retirement

9. Respondent Mosley failed to establish by a preponderance of competent
medical evidence that she is permanently disabled or incapacitated for performance of her
duties as a Psychologist Clinical with respondent Department of Corrections. Accordingly,
respondent's Mosley's appeal from CalPERS's determination denying her application for
industrial disability retirement is denied.

ORDER

The appeal of respondent Linda Mosley is denied.

DATED: June 5, 2017

MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings