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 Disability Retirement of:

LAURA HAUPERT
Respondent,

and

RIPON UNIFIED SCHOOL DISTRICT,
Respondent.

Case No. 2017-0151
OAH No. 2017051272

PROPOSED DECISION

This matter was heard before Administrative Law Judge Marcie Larson, Office of Administrative Hearings, State of California, on October 3, 2017, in Sacramento, California.

The California Public Employees' Retirement System (CalPERS) was represented by Rory Coffey, Senior Staff Attorney.

There was no appearance by or on behalf of Laura Haupert (respondent) or the Ripon Unified School District (District). Respondent and the District were duly served with a Notice of Hearing. The matter proceeded as a default against respondent and the District, pursuant to California Government Code section 11520, subdivision (a).

Evidence was received, the record was closed, and the matter was submitted for decision on October 3, 2017.
ISSUE

The issue on appeal is whether at the time respondent filed her application for disability retirement, she was permanently disabled or substantially incapacitated from the performance of her usual and customary duties as an Account Technician for the District on the basis of orthopedic conditions (neck and wrists).

FACTUAL FINDINGS

1. Respondent was employed as an Account Technician for the District. On June 12, 2016, respondent signed and thereafter filed an application for service retirement pending disability retirement (application) with CalPERS. By virtue of her employment, respondent is a local miscellaneous member of CalPERS subject to Government Code section 21151. Respondent was 52 years old when she filed her application.

2. In filing the application, respondent claimed disability on the basis of “severe spinal stenosis (c-spine) [and] carpal tunnel.” Respondent wrote that her disability occurred from “repetitive stress injury.” Respondent wrote that her limitations included her inability to stand or sit for “periods of time,” and that she was not able to use a computer, perform repetitive activities using her arms and hands, or lift, push, or pull more than 10 to 15 pounds.

3. CalPERS obtained medical records and reports from Ripul Panchal, D.O., Jeffrey Daley, M.D., and Eduardo Lin, M.D. CalPERS retained Daniel D’Amico, M.D., to conduct an Independent Medical Evaluation (IME) of respondent concerning her orthopedic conditions and issue an IME report. After reviewing these doctors’ reports, CalPERS determined that respondent was not substantially incapacitated from the performance of her job duties as an Account Technician for the District.

4. On November 18, 2016, CalPERS notified respondent that her application for disability retirement was denied. Respondent was advised of her appeal rights. Respondent filed an appeal and request for hearing by letter dated December 8, 2016.

5. On May 25, 2017, Anthony Suine, in his official capacity as Chief, Benefit Services Division, Board of Administration, CalPERS, made and thereafter filed the Statement of Issues. Thereafter the matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq. Respondent and the District failed to appear at the hearing.

Duties of an Account Technician

6. As set forth in the Job Description, an Account Technician works under the general direction of the Chief Business Officer, to “plan and perform financial recordkeeping
of complex budgeting and accounting nature, monitor and analyze various budgets and expenditure patterns, prepare special reports, maintain fiscal and statistical data,” and perform “specialized assignments.” The essential physical requirements of the position require respondent to “very frequently” work at a desk, “stand and circulate for extended periods of time,” bend, twist, kneel, stoop, crawl and run. She occasionally is required to lift 25 pounds and seldom carries 50 pounds.

Independent Medical Evaluation by Daniel D’Amico, M.D.

7. On September 6, 2016, at the request of CalPERS, Dr. D’Amico conducted an IME of respondent and thereafter prepared an initial report and one supplemental report. Dr. D’Amico testified at hearing. Dr. D’Amico is a board-certified orthopedic surgeon. He obtained his medical degree from Stanford University School of Medicine, in 1958. Since 1966, he has operated a private practice where he treats patients with orthopedic conditions. He is a Qualified Medical Examiner and performs IMEs for CalPERS.

8. As part of the IME of respondent, Dr. D’Amico interviewed respondent, obtained a medical history, and conducted a physical examination. He reviewed respondent’s job description and respondent’s medical records related to her orthopedic condition.

HISTORY OF INJURY AND RESPONDENT’S COMPLAINTS

9. Respondent reported to Dr. D’Amico that she was injured at work on March 19, 2014, as a result of overuse of her upper extremities, neck, shoulder and left arm. In 2014, she began experiencing pain in the left side of her neck, trapezius area, shoulder and left arm. She continued to work until January 2015. She was off work until February 2016. She returned to work until June 2016, when she retired. Respondent stated that her work area was not “appropriately ergonomically suited.” Respondent was given modified duty as a “yard duty person,” which required her to stand all day. Standing caused her neck, shoulder and arm pain.

10. Respondent participated in physical therapy and had two epidural steroid injections in her cervical spine. The second injection gave her some relief. She had two MRI studies performed which showed degenerative disc disease and a disc bulge at “one level.” Respondent complained of continued pain in her cervical spine and upper thoracic spine. Respondent also complained of pain in her left-hand fingers. At some point an “EMG” and nerve conduction study was performed. She had some median nerve compression, but was not diagnosed with carpal tunnel.

11. Respondent reported that she continued to suffer from generalized neck pain, lower cervical spine sensation that felt “like it is freezing,” numbness in two fingers and “shaking pain up [her] neck.” She also reported diffuse pain in her left shoulder and arm. She managed her pain by avoiding bending over, and repetitive use of her left arm or shoulder. She performed exercises and used pain medication.
PHYSICAL EXAMINATION

12. Dr. D'Amico conducted a physical examination of respondent's upper and lower extremities. Respondent had normal straight leg raising, no reflexes or sensory changes and no motor changes in her lower extremities. Her range of motion for her neck was normal. Dr. D'Amico examined respondent's shoulders. Her forward flexion and active abduction was normal. Respondent had negative impingement findings of both shoulders. During the examination, respondent complained of pain at the base of her neck at the midline and upper thoracic area, left trapezius area and diffuse left arm pain. Respondent's reflexes at her biceps, triceps and brachioradialis area were symmetrical. She had normal biceps and triceps strength and her grip was "good" bilaterally.

13. Dr. D'Amico also examined respondent's wrists and hands. He tested the nerves in respondent's wrists, which were negative for "Tinel's sign." Her wrist motion was normal. Respondent had "a little bit of decreased sensation to pinwheel testing" on an area of her left forearm. Her reflexes and strength were normal.

DIAGNOSES

14. Based on Dr. D'Amico's evaluation of respondent and review of her medical records related to her orthopedic condition, his diagnosis of respondent's conditions was "very mild-to-moderate degenerative disc disease at C4-5 and C5-6, very mild foraminal stenosis bilaterally at C5-6, and very mild stenosis at C5-6 of her canal, none of which are in a level that one would expect symptoms of a neurologic nature." Dr. D'Amico did not find any evidence of carpal tunnel. Other diagnoses included:

1. Overuse syndrome left upper extremity in the course of her work
2. Chronic recurrent sprain/strain soft tissue
3. Somatoform pain disorder
4. Obesity

15. In response to the question posed by CalPERS to Dr. D'Amico concerning whether there was specific job duties that respondent was unable to perform because of a physical or mental condition, he opined that "on the objective findings alone, there are no duties that she cannot perform." He opined that she can lift 45 pounds "on occasion" and 25 pounds "seldom." He also recommended that she sit at a desk with "ergonomically appropriate settings." He further opined that there "are no objective physical abnormalities and the EMG does not indicate cervical radiculitis or radiculopathy as indicated in the records."
16. Dr. D'Amico opined that respondent was not substantially incapacitated from the performance of her usual duties as an Account Technician. Dr. D'Amico suggested that respondent could be given "accommodation for her subjective symptoms."

SUPPLEMENTAL REPORT

17. On November 3, 2016, Dr. D'Amico issued a Supplemental Report responding to an October 27, 2016 letter from CalPERS requesting clarification regarding his opinions. Specifically, Dr. D'Amico was asked if based on objective findings, not respondent's complaints, are there any job duties she could not perform. Dr. D'Amico responded by stating that there were no objective physical abnormalities and the EMG did not indicate cervical radiculitis or radiculopathy based on his review of the records. Also, on the physical examination, he found no evidence of "reflex, motor, or significant sensory changes or weakness." Dr. D'Amico opined that respondent could perform her job duties "given a desk with ergonomically appropriate settings," which would address her subjective complaints.

Discussion

18. When all the evidence is considered, Dr. D'Amico's opinion that respondent was not substantially incapacitated from the performance of her usual and customary duties as an Account Technician for the District, based upon her orthopedic conditions, was persuasive. Dr. D'Amico based his opinion on his review of respondent's job description and medical records, and a physical examination. The examination and review of records conducted by Dr. D'Amico revealed that respondent has degenerative changes in her cervical spine that were not substantially incapacitating. Dr. D'Amico found no evidence of carpal tunnel. Her subjective complaints of pain can be addressed by utilizing a desk with ergonomically appropriate settings.

19. Respondent failed to appear at hearing, or present competent medical evidence to support her assertion that at the time she filed her application she was substantially incapacitated from the performance of her usual and customary duties as an Account Technician for the District based upon the legal criteria applicable in this matter. Consequently, respondent failed to establish that her disability retirement application should be granted based upon her orthopedic condition.

LEGAL CONCLUSIONS

1. Respondent seeks disability retirement pursuant to Government Code section 21151, subdivision (a), which provides in part that any local miscellaneous 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."
2. To qualify for disability retirement, respondent must prove that, at the time she applied, she was "incapacitated physically or mentally for the performance of . . . her duties . . ." (Gov. Code, § 21156, subd. (a)(1).) As defined in Government Code section 20026:

"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.


4. The burden of proof was on respondent to demonstrate that she is permanently and substantially unable to perform her usual duties such that she is permanently disabled. (Harmon v. Board of Retirement of San Mateo County, (1976) 62 Cal. App. 3d 689; Glover v. Board of Retirement (1980) 214 Cal. App. 3d 1327, 1332.) To meet this burden, respondent must submit competent, objective medical evidence to establish that, at the time of her application she was permanently disabled or incapacitated from performing the usual duties of her position. (Harmon v. Board of Retirement, supra, 62 Cal. App. 3d at 697.)

5. Respondent did not present competent, objective medical evidence to establish that she was permanently disabled or substantially incapacitated from performance of her duties as an Account Technician for the District at the time she filed her disability retirement application. Therefore, based on the Factual Findings and Legal Conclusions, respondent is not entitled to retire for disability pursuant to Government Code section 21151.

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ORDER

Respondent Laura Haupert’s application for disability retirement is DENIED.

DATED: October 10, 2017

MARCIE LARSON
Administrative Law Judge
Office of Administrative Hearings