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:

GERALDJAN B. GEROLAGA,
Respondent,

and

DEPARTMENT OF STATE HOSPITALS NAPA,
Respondent.

Case No. 2017-0729
OAH No. 2017110491

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter on March 1, and June 15, 2018, in Oakland, California.

Senior Staff Attorney Preet Kaur represented the California Public Employees’ Retirement System (CalPERS).

Respondent Geraldjan B. Gerolaga was present on both dates of hearing and represented himself. Respondent Department of State Hospitals Napa did not appear at either hearing. The matter proceeded as a default pursuant to Government Code section 11520 against respondent State Hospitals.

The matter was submitted for decision on June 15, 2018.

FACTUAL FINDINGS

1. Respondent Geraldjan B. Gerolaga was employed as a Psychiatric Technician with the California Department of State Hospitals Napa (respondent DSH). By virtue of his employment, respondent is a state safety member of CalPERS subject to Government Code section 21151.
2. On January 25, 2017, respondent signed an application for industrial disability retirement and respondent DSH submitted the application of industrial disability retirement on behalf of respondent Gerolaga. In filing the application, disability was claimed on the basis of an orthopedic (lower back, lower extremities and shoulders) condition.

3. CalPERS obtained medical reports concerning respondent’s orthopedic condition from competent medical professionals. After review of the reports, CalPERS has determined that respondent was not permanently disabled or incapacitated from performance of his job duties as a Psychiatric Technician at the time the application for industrial disability retirement was filed. Respondent’s application was denied by letter dated June 2, 2017. Respondent filed a timely appeal of the denial on June 30, 2017.

4. Howard Sturtz, M.D., is the orthopedic surgeon who performed an independent medical examination of respondent in connection to his application. Dr. Sturtz prepared a report and testified at the hearing. He examined respondent and reviewed his medical records. He found no clear objective physical findings; and low back pain without clear objective physical findings or diagnostic abnormalities. Dr. Sturtz found respondent’s performance as unnatural and observed respondent reacted to maneuvers that should not be painful. Dr. Sturtz notes that surveillance films showed respondent moving, even jumping and running in a normal manner without any limping or display of pain avoidance.

5. Respondent testified that on March 30, 2014, while performing his duties as a prelicensed psychiatric technician at Napa State Hospital, he heard a “pop.” He experienced pain in his lower back. He went to Dr. Tang (no full name available) at Kaiser Occupational Health in Vallejo the next day. Dr. Tang took respondent off work.

6. Respondent went to Alan Kimelman, M.D. for a Functional Capacity Evaluation on April 25, 2018. Dr. Kimelman did not testify at the hearing. Dr. Kimelman finds in his report that respondent is unable to return to work at regular duties as he is unable to lift 50 pounds even once per day. However, a Neuro-Diagnostic Evaluation on May 15, 2018 revealed no evidence of axonal denervation or ventral motor large fiber lumbo-sacral radiculopathy. Respondent had a normal neuro-diagnostic evaluation.

7. Respondent completed his training as a psychiatric technician and was licensed on July 4, 2014. He is now studying business accounting at Diablo Valley College. He has worked since his injury as a lot porter for a car sales business and as a supported living service staff. He indicated that he still cannot lift 20 pounds. He does not take any medication.

8. Respondent did not establish by competent medical opinion that he is incapacitated from the performance of his duty as a psychiatric technician. He did not establish that he has a disability of permanent or extended and uncertain duration.
LEGAL CONCLUSIONS

1. Pursuant to 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 a result of an industrial disability shall be retired for disability pursuant to this chapter, regardless of age or amount of service."

2. The applicant for disability retirement has the burden of proving, by competent medical evidence, that he is disabled from performing the usual duties of his position. (Harmon v. Board of Retirement of San Mateo County (1976) 62 Cal.App.3d 689, 691.)

3. As set forth in Finding 8, respondent did not meet his burden of establishing that he is incapacitated from performing his usual duties as a Psychiatric Technician for the Department of State Hospitals Napa.

ORDER

Respondent Geraldjan B. Gerolaga’s application for disability retirement is denied.

DATED: July 11, 2018

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings