BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

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

DAVID P. LUTHER,
Respondent,

and

IRONWOOD STATE PRISON,
CALIFORNIA DEPARTMENT OF CORRECTIONS & REHABILITATION,
Respondent.

Case No. 2018-0889
OAH No. 2018091009

PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 22, 2019, in Riverside, California.

Austa Wakily, Attorney, represented petitioner Anthony Suine, Chief, Benefit Services Division, Board of Administration, California Public Employees' Retirement System (CalPERS), State of California.

No one appeared for or on behalf of respondent David P. Luther.

No one appeared for or on behalf of respondent, Ironwood State Prison, California Department of Corrections and Rehabilitation.

The matter was submitted on January 22, 2019.

ISSUE

When he filed his industrial disability retirement application, was Mr. Luther permanently disabled or substantially incapacitated from performing the regular and
customary duties of a Correctional Officer due to orthopedic (hip, toes, neck and lower back) conditions?

FACTUAL FINDINGS

Procedural Background

1. On September 27, 2018, complainant filed the Statement of Issues while acting in his official capacity.

2. Mr. Luther was employed as a Correctional Officer by the Ironwood State Prison, California Department of Corrections and Rehabilitation. By virtue of his employment, Mr. Luther is a state safety member of CalPERS subject to Government Code section 21151.

3. On January 31, 2018, Mr. Luther signed and filed an application for disability retirement based on orthopedic (hip, toes, neck, and lower back) conditions. CalPERS denied his application for a disability retirement and notified him of that decision by letter dated July 11, 2018.

4. By letter dated August 8, 2018, Mr. Luther timely appealed CalPERS's decision to deny his application for a disability retirement. This hearing followed.

5. The Notice of Hearing in this matter was properly served by certified mail to Mr. Luther's address, which is the same address listed on his Disability Retirement Election Application, setting the hearing for January 22, 2019, at 10:00 a.m. At the date, time and location of the hearing on January 22, 2019, the matter was called and there was no appearance by Mr. Luther. The matter was postponed for 30 minutes to allow Mr. Luther time to appear. At 10:30 a.m., no appearance had been made by Mr. Luther. Thereafter, this matter proceeded to hearing.

6. No witnesses testified at the hearing on behalf of CalPERS.

LEGAL CONCLUSIONS

Burden of Proof

1. Mr. Luther has the burden of proof to establish that CalPERS's determination that he is not eligible for industrial disability retirement is incorrect and that he is substantially incapacitated from performance of his duties as a Correctional Officer. (Evid. Code, § 500.) Mr. Luther provided no evidence and did not meet his burden to show that he was substantially incapacitated from the performance of his job duties at the time he filed his application on January 31, 2018.
2. The Public Employees' Retirement Law (Retirement Law) governs disability retirement and reinstatements and grants sole jurisdiction to CalPERS to make such determinations. (See Gov. Code, §§ 20026, 20125, 21154, 21156, 21190, 21192 and 21193.)

Applicable Statutes Regarding Applications for Disability Retirement

3. Government Code section 20026 provides in 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, 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. Government Code section 20382 provides in part:

"State industrial member" includes all state employees . . . employed in the state prisons or facilities of the Department of Corrections. . . .

Except as expressly otherwise provided, the provisions of this part applicable to state miscellaneous members apply to state industrial members. . . .

5. 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.

6. Government Code section 21152 provides:

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

(a) The head of the office or department in which the member is or was last employed, if the member is a state member other than a university member.

(b) The university if the member is an employee of the university.
(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.

(d) The member or any person in his or her behalf.

7. Government Code section 21154 provides in part:

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. Government Code section 21156 provides in part:

(a)(1) If the medical examination and other available information show . . . 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 . . .

(2) In determining whether a member is eligible to retire for disability, the board . . . shall make a determination on the basis of competent medical opinion . . .

Case Law Defining Disability Retirement


Evaluation

10. Mr. Luther failed to meet his burden to prove that he is substantially incapacitated to perform his usual job duties, and he failed to prove that he is eligible for a disability retirement. This conclusion is based upon the fact that Mr. Luther presented no evidence at the hearing and failed to appear. As such, his application for a disability retirement is denied.

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ORDER

CalPERS’s determination that David P. Luther, was not permanently disabled or substantially incapacitated from the performance of his usual and customary duties as a Correctional Officer as of the date of his application for disability is affirmed.

DATED: February 14, 2019

DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings