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 Industrial Disability Retirement of:

KIM J. BALDI,
   Respondent,

and

CALIFORNIA HIGHWAY PATROL,
   Respondent.

Case No. 2018-1082

OAH No. 2018120626

PROPOSED DECISION

This matter was heard before Administrative Law Judge Marcie Larson, Office of Administrative Hearings, State of California, on April 15, 2019, in Sacramento, California.

The California Public Employees’ Retirement System (CalPERS) was represented by Cynthia Rodriguez, Senior Attorney.

There was no appearance by or on behalf of respondents Kim J. Baldi (respondent) or the California Highway Patrol (CHP). Respondents were duly served with a Notice of Hearing. The matter proceeded as a default against respondents pursuant to California Government Code section 11520, subdivision (a).

Evidence was received, the record was closed, and the matter was submitted for decision on April 15, 2019.

ISSUE

The issue on appeal is whether at the time respondent filed his application for industrial disability retirement on the basis of a cardiologic (heart) condition, was he substantially incapacitated from the performance of his duties as a State Traffic Officer for CHP?
FACTUAL FINDINGS

**Procedural History**

1. Respondent was employed by the CHP for approximately 30 years. On or about October 19, 2015, respondent signed and thereafter filed an application for service retirement with CalPERS. He retired for service effective December 17, 2015. On or about June 13, 2018, respondent signed and thereafter filed an application for industrial disability retirement (application) with CalPERS. By virtue of his employment, respondent is a state safety member of CalPERS subject to Government Code section 20390.

2. In filing the application, respondent claimed disability on the bases of hypertension and coronary artery blockages. Respondent wrote that the disability was “ongoing/cumulative over several years” and that he had a “heart attack” on February 3, 2017, which caused the “need for placement of stents.” Respondent was also required to take medication for his condition. Respondent contended that his condition precluded him from the performance of law enforcement duties.

3. CalPERS obtained medical records and reports from Curtis Smith, M.D., Michael Staszel, D.O., Raye Bellinger, M.D., and Thomas Leonard, M.D., who conducted an Independent Medical Evaluation (IME) of respondent concerning his heart condition. On September 18, 2018, CalPERS notified respondent that his application for industrial disability retirement was denied. CalPERS stated that after reviewing the medical evidence submitted, CalPERS determined that respondent was not substantially incapacitated from the performance of his duties as an officer for the CHP. Respondent was notified of his right to appeal the determination. Respondent filed an appeal and request for hearing by letter dated September 28, 2018.

4. On December 18, 2018, Anthony Suine, in his official capacity as Chief, Benefit Services Division, Board of Administration, CalPERS, made and thereafter filed the Statement of Issues.

**Duties of a CHP Officer**

5. As set forth in the California State Personnel Board Classification Specification, a CHP officer “[p]atrols the highways and unincorporated areas in an automobile or on a motorcycle using defensive driving tactics or is assigned to a fixed post duty . . . ” The fixed post duty can include interpreting and applying the Vehicle Code and other regulations and court rulings. Officers may be required to stop unsafe motorists and issue enforcement documents, conduct surveillance and make custody arrests. Additionally, a document listing the “14 Critical Physical Activities” required of an officer provides descriptions of activities such as sitting, standing, running, pushing, pulling, walking and climbing.
6. K.C. Foster, Lieutenant Commander for the CHP, signed a “Physical Requirements of Position/Occupational Title” (Physical Requirements) form for respondent’s position on June 13, 2018, which was submitted to CalPERS. According to the Physical Requirements form, when working as an Officer, respondent: (1) constantly (over six hours per day) drove; (2) frequently (three to six hours per day) sat and stood; (3) occasionally (up to three hours) ran, walked, crawled, kneeled, climbed, squatted, bent and twisted at the neck and waist, reached above and below the shoulders, pushed and pulled, engaged in fine manipulation, power and simple grasping, repetitively used his hands, used a keyboard and mouse, carried from 0 to over 100 pounds, walked on uneven ground, was exposed to excessive noise, and extreme temperature, humidity and wetness, dust, gas, fumes and chemicals, operated foot controls, used special visual or auditory protective equipment, and worked with biohazards; and, (4) never worked with heavy equipment or worked at heights.

**Independent Medical Evaluation by Thomas E. Leonard, M.D.**

7. On August 27, 2018, at the request of CalPERS, Dr. Leonard conducted an IME of respondent and issued a report. Dr. Leonard testified at hearing. He is board-certified in internal medicine by the American Board of Internal Medicine, with subspecialties in cardiology and pulmonary disease. He obtained his medical degree from New York Medical School in 1967. Dr. Leonard ran a cardiology and pulmonary disease private practice from 1973 until 1996. He is a Qualified Medical Evaluator and also performs IMEs for CalPERS.

8. As part of respondent’s IME, Dr. Leonard interviewed respondent, obtained a medical history, conducted a physical examination and reviewed medical records related to respondent’s heart condition. He also reviewed the classification specification, the 14 Critical Physical Activities form, and the physical requirements of a CHP officer.

**Respondent’s Complaints and History of Present Injury**

9. Respondent informed Dr. Leonard that he was 56 years old and a retired CHP officer. Most of his career was spent as a patrol officer. He retired in December 2015, after working for CHP for 30 years. Respondent reported that on February 1, 2017, he suffered from chest pain, which he described as “severe.” Respondent was seen by his primary care physician, who referred him to a cardiologist. On March 8, 2017, respondent underwent a chemical stress test that was positive. Respondent was admitted to the hospital and attempts were made to clear his “occluded right artery.” The attempts were unsuccessful. Dr. Leonard explained that it was determined respondent’s right artery had a total obstruction.

10. Respondent was transferred to University of California, Davis Hospital. On April 25, 2017, he underwent a “percutaneous angioplasty,” and had three stents placed in his right artery. The procedure was successful and the obstruction was relieved. Respondent reported that since the procedure he does not suffer discomfort or palpitations. He exercises regularly, but becomes “‘short of breath or winded at times.’”
PHYSICAL EXAMINATION

11. Dr. Leonard conducted a physical examination of respondent, which included a review of systems. He noted that respondent described shortness of breath at times when exercising, but not coughing or wheezing. Dr. Leonard also noted that respondent had no cardiac symptoms. He described respondent as being in good physical shape. Overall, Dr. Leonard opined that respondent's examination was normal.

REVIEW OF MEDICAL RECORDS

12. Dr. Leonard reviewed respondent's medical records and a report prepared by a Qualified Medical Evaluation report related to his heart condition. He found no evidence that respondent suffered from a heart attack, or had injury to his heart. Rather, he had a single vessel disease that was corrected with angioplasty.

DIAGNOSES AND OPINIONS

13. Based on Dr. Leonard's evaluation of respondent, his diagnoses were “chronic high grade obstruction of right coronary artery, status post stenting of right coronary artery, essential hypertension [and] hyperlipidemia.” Dr. Leonard explained that based on information from respondent and his review of the medical records, respondent had “chronic right coronary artery disease.” The angioplasty was successful and he had “excellent ventricular function.” Dr. Leonard opined that respondent is “exercise-oriented” with “excellent physical tolerance, with normal left ventricular function, [and] excellent collateral vessels, and reconstituted circulations through his right coronary artery.” He further opined that respondent “is certainly able to perform all the tasks of a [CHP] officer.”

14. In response to the question posed by CalPERS to Dr. Leonard concerning whether there were specific job duties that respondent was unable to perform because of a physical or mental condition, Dr. Leonard stated respondent is not “substantially incapacitated for the performance of his duties” and there were no specific job duties he was unable to perform.

Discussion

15. When all the evidence is considered, Dr. Leonard's opinion that respondent is not permanently disabled or substantially incapacitated from the performance of his usual and customary duties as a CHP officer, based upon his heart condition, was persuasive. Dr. Leonard based his opinion on his review of respondent's classification specification, 14 Critical Physical Activities form, physical requirements of a CHP officer, medical records and a physical examination. The evidence established respondent underwent successful angioplasty on April 25, 2017, and is not suffering from any symptoms or limitations that preclude him from performing his duties as a CHP officer.
16. Respondent failed to appear at hearing, and did not present competent medical evidence to demonstrate that, at the time he submitted his application, he was permanently disabled or substantially incapacitated from the performance of his usual duties as a CHP officer based upon the legal criteria applicable in this matter. Consequently, respondent failed to establish that his industrial disability retirement application should be granted based upon his heart condition.

LEGAL CONCLUSIONS

Applicable Law

1. "All members employed in the Department of the California Highway Patrol" are patrol members of CalPERS. (Gov. Code, § 20390, subd. (a).) Government Code section 21151, subdivision (a), provides the following with regard to a patrol member’s eligibility for industrial disability retirement:

   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. Government Code section 20026 provides, in pertinent part:

   "Disability" and "incapacity for performance of duty" as the 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 21156, subdivision (a), provides, in pertinent part:

   (1) 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 . . .

   (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 and shall not use disability retirement as a substitute for the disciplinary process.
4. Vehicle Code section 2268, provides that:

(a) Any member of the Department of the California Highway Patrol, as specified in Sections 2250 and 2250.1, shall be capable of fulfilling the complete range of official duties administered by the commissioner pursuant to Section 2400 and other critical duties that may be necessary for the preservation of life and property. Members of the California Highway Patrol shall not be assigned to permanent limited duty positions which do not require the ability to perform these duties.

(b) Subdivision (a) does not apply to any member of the California Highway Patrol who, after sustaining serious job-related physical injuries, returned to duty with the California Highway Patrol and who received a written commitment from the appointing power allowing his or her continued employment as a member of the California Highway Patrol. This subdivision applies only to commitments made prior to January 1, 1984.

(c) Nothing in subdivision (a) entitles a member of the California Highway Patrol to, or precludes a member from receiving, an industrial disability retirement.


6. The burden of proof is on respondent to prove, by a preponderance of the evidence, that he qualifies for industrial disability retirement. (McCoy v. Board of Retirement (1986) 183 Cal.App.3d 1044; Evid. Code, § 500; 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 his application, he was permanently disabled or substantially incapacitated from performing the usual duties of his position. (Harmon v. Board of Retirement. supra. 62 Cal.App.3d at 697.)

Conclusion

7. Respondent did not present competent, objective medical evidence to establish that he was permanently disabled or substantially incapacitated from performance of his
usual duties as a CHP officer at the time he filed his industrial disability retirement application. Therefore, based on the Factual Findings and Legal Conclusions, respondent is not entitled to retire for industrial disability pursuant to Government Code section 21151, subdivision (a).

ORDER

Respondent Kim J. Baldi's application for industrial disability retirement is DENIED.

DATED: May 6, 2019

MARCIE LARSON
Administrative Law Judge
Office of Administrative Hearings