

ATTACHMENT A

THE PROPOSED DECISION

FACTUAL FINDINGS

1. Respondent Irma G. Sepulveda worked for about 17 years as a school bus driver for respondent Santa Cruz City High School District. She is a local miscellaneous member of the California Public Employees' Retirement System (CalPERS).

2. Sepulveda applied to CalPERS in March 2018 to retire for disability effective January 24, 2018. Her application alleges that she can no longer perform her duties as a school bus driver because of an injury to her "lower back."

3. After an investigation including a medical examination, CalPERS notified Sepulveda in October 2018 that it would deny her application. Sepulveda appealed and requested a hearing.

4. Acting in his official capacity as Chief of the CalPERS Benefit Services Division, complainant Anthony Suine signed a statement of issues regarding Sepulveda on March 15, 2019. The statement of issues alleges that the Board of Administration should deny Sepulveda's application for disability retirement because any lower back injury she may have does not substantially incapacitate her from performing her former duties as a school bus driver.

Employment and Injury History

5. During her tenure as a school bus driver, Sepulveda usually drove her route three times per day.

6. Before beginning her route, Sepulveda checked her bus for safety. She inspected its undercarriage, tires, cables, reflectors, seats, and windows; she examined the hoses and checked the oil level. These tasks required her to bend and stretch.

7. Along her route, Sepulveda helped children in and out of the bus, including children using wheelchairs. Sometimes she carried children, and she also had to bend, stoop, and push to belt them in or to operate the wheelchair ramp.

8. Sepulveda supervised the children while she drove. Driving required her to sit, sometimes for two to three hours at a time, and to twist her body to look around her.

9. Before April 2017, Sepulveda had not experienced any back problems. One day that month, she felt sharp pain in her low back during a pre-trip bus safety check. She sought medical treatment.

10. Sepulveda continued to work while receiving medical treatment for her back pain until the December 2017 holiday school break. On January 24, 2018, however, her employer informed her that it had received a report from a Dr. Ramon Jimenez (Ramon Jimenez, M.D.) stating that Sepulveda should not lift items weighing more than 30 pounds, and should not bend or stoop. Sepulveda's employer stated that it could not accommodate these restrictions, and Sepulveda did not return to duty after this date.

11. Sepulveda testified credibly that sitting through her route between April and December 2017 left her lower back tired and painful, as does extended driving even today. She experiences regular back pain extending from her ribs to her hips. Picking up heavy items is difficult, as is picking any items up from the floor. She can do housework, but not yardwork. Physical therapy and chiropractic treatment have provided only temporary pain relief.

12. Sepulveda uses medication to control her back pain. She did not describe any home exercise program or recreational sports activities.

Medical Evidence

13. No report from Dr. Jimenez was in evidence, and he did not testify.

14. In April 2019, Melinda Brown, M.D., examined Sepulveda. Dr. Brown recommended that Sepulveda undertake a four-week physical therapy program "by an exercise specialist under medical supervision," to develop an "independent home exercise program." Dr. Brown also recommended chiropractic treatment.

15. In May and June 2019, Sepulveda did see a chiropractor (Thomas E. Smith, D.C.), as Dr. Brown had recommended. Dr. Smith performed some in-office treatments, and also recommended a home exercise and postural improvement program.

16. CalPERS engaged Mark W. Howard, M.D., to evaluate Sepulveda's condition. Dr. Howard is board-certified as an orthopedic surgeon and as a spinal surgeon.

17. Dr. Howard reviewed records relating to Sepulveda's treatment for her lower back pain, and also reviewed a written job description. He interviewed and examined Sepulveda on October 1, 2018.

18. Dr. Howard observed no significant orthopedic or neurologic pathology in Sepulveda's spine. He acknowledged that Sepulveda reported pain with "lifting and/or repetitive bending activities," but did not find any medical reason that she could not do such activities. Dr. Howard also concurred with Dr. Brown's and Dr. Smith's opinions that a careful and regular exercise program would be likely to alleviate Sepulveda's most significant discomfort. Dr. Howard's opinions are persuasive.

LEGAL CONCLUSIONS

1. Respondent Sepulveda may retire for disability if she is "incapacitated for the performance of duty." (Gov. Code, § 21150, subd. (a).) She must present "competent medical opinion" demonstrating her inability to work, and demonstrating that this inability is "of permanent and extended duration." (*Id.*, § 20026.)

2. The matters stated in Findings 5 through 18 do not establish either that respondent is unable to perform her duties as a school bus driver, or that any diminished ability is of permanent and extended duration.

ORDER

The application by respondent Irma G. Sepulveda for disability retirement is denied.

DATE: July 30, 2019

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Juliet E. Cox
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JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings