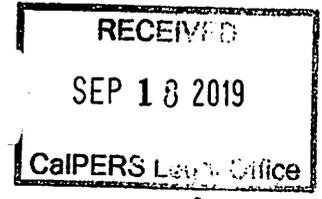


**ATTACHMENT A**

**THE PROPOSED DECISION**

December 27, 2019

Attachment A



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

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

**TRINA S. RAHM and**

**CALIFORNIA MEDICAL FACILITY, CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND REHABILITATION, Respondents.**

**OAH No. 2019050262**

**CASE No. 2019-0273**

**PROPOSED DECISION**

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on September 4, 2019, in Sacramento, California.

Rory Coffey, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Trina S. Rahm (respondent) represented herself.

There was no appearance by or on behalf of the California Medical Facility, California Department of Corrections and Rehabilitation (Department). CalPERS

**PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
FILED September 18, 2019  
*[Signature]*

established that it served the Department with a Notice of Hearing. Consequently, this matter proceeded as a default hearing against the Department pursuant to Government Code section 11520, subdivision (a).

Evidence was received, the record was closed, and the matter was submitted on September 4, 2019.

### **ISSUE**

On the basis of orthopedic (upper extremity, hand, wrists, brachial neuritis) and internal (chemical exposure and asthma) conditions, is respondent substantially incapacitated from performing her usual and customary duties as a Rehabilitation Therapist (Art)?

### **FACTUAL FINDINGS**

1. Respondent was employed as a Rehabilitation Therapist (Art)<sup>1</sup> by the Department. On September 10, 2018, CalPERS received respondent's Disability Retirement Election Application (application) dated August 14, 2018. By letter dated December 11, 2018, CalPERS denied respondent's application. She filed a timely appeal. This hearing followed.

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<sup>1</sup> Art is one of several rehabilitation specialties of State Facilities Rehabilitation Therapists.

## **Respondent's Application**

2. In her application, respondent described her disability as: "brachial neuritis; upper extremity and hand/wrist pain and numbness; asthma; chemical exposure and sensitivity; PTSD; anxiety; depression." She stated that her disability occurred due to "17+ years with fume exposure, moldy ventilation, awkward, difficult ergonomics; work with hardened criminals with mental illness, with death threats and injuries from combat." She listed her limitations or preclusions as: "avoid prisons and confrontational environments; avoid fume exposure and moldy ventilation; avoid repetitive or forceful handling and grasping." Respondent claimed these disabilities have left her "completely unable to perform [her] job and unable to live in high crime housing areas."

Respondent stated in her application that her last day on the Department's payroll was April 10, 2018.

3. In its December 11, 2018 denial letter, CalPERS stated that its review "included the reports prepared by Patricia Wiggins, M.D., Harry Khasigian, M.D., and Jeffrey L. Stevenson, M.D." Based on these reports, CalPERS determined respondent's orthopedic (upper extremity, hand, wrist, and brachial neuritis) and internal (chemical exposure and asthma) conditions are not disabling. CalPERS did determine, however, that respondent is substantially incapacitated for the performance of her job duties based on her non-industrial psychiatric condition.

4. The letter notified respondent that she had 30 days to file a written appeal from the denial. By letter dated January 4, 2019, respondent appealed CalPERS's findings.

## **Duties of a Rehabilitation Therapist (Art)**

5. CalPERS submitted two documents that describe the duties of a Rehabilitation Therapist (Art): a list of physical requirements of the position and a Duty Statement. Generally, the position requires the incumbent to: "provide rehabilitative programs and services through appropriate patient assessment, treatment, service planning, therapeutic activities, discharge planning and community reintegration. . . . The Rehabilitation Therapist will provide recovery focused treatment activities and participate on the treatment teams of patients assigned." On August 20, 2018, respondent signed a form entitled: "Physical Requirements of Position/Occupational Title." The pertinent physical tasks of a Rehabilitation Therapist (Art) are:

Occasionally (up to three hours): Standing, walking, kneeling, squatting, bending, twisting, reaching (above and below shoulder), pushing and pulling, simple grasping, and lifting or carrying up to 50 pounds.

Frequently (up to six hours): sitting, keyboard, and mouse use.

Constantly (over six hours): fine manipulation and repetitive use of hands.

Never: lift over 50 pounds, exposure to excessive noise or extreme temperatures, exposure to dust gas, fumes, chemicals, or working with biohazards.

## **Expert Opinions**

### **ORTHOPEDIC IME, DR. HARRY KHASIGIAN**

6. CalPERS retained Dr. Harry Khasigian, M.D., to conduct an Independent Medical Evaluation (IME) of respondent. Dr. Khasigian is a board-certified orthopedic surgeon with a subspecialty in orthopedic sports medicine. He examined respondent on November 30, 2018, took respondent's medical history, reviewed respondent's medical records, and prepared an IME report dated December 5, 2018. He testified at hearing about the findings in his report.

7. As part of the IME, Dr. Khasigian reviewed respondent's job description and the physical requirements of a Rehabilitation Therapist (Art). Dr. Khasigian also reviewed limited medical records related to respondent's orthopedic condition.

8. Respondent explained to Dr. Khasigian that she was injured on May 11, 2017, when she was "sending a lot of emails in a hurry," to "get away from fumes at her workspace due to a suicidal situation" of an inmate. She reported that her hands began to cramp, and she could not continue her work. She told Dr. Khasigian that she "has never been the same." She filed a workers' compensation claim following this injury. Respondent also reported that she had been "doing the work of two people" for over 17 years, and that she had a poor ergonomic set-up in her workplace. Following a 2005 workers' compensation claim related to her upper extremities, respondent received an ergonomic desk and chair.

9. Respondent reported that she did not do physical therapy, had no x-rays related to her injury, did not use medications or topical creams for pain, did not consistently wear wrist braces, and sees her family physician every eight weeks. She also explained her general job duties, and stated that rather than providing

rehabilitative services, she felt she was only filing reports. She described her duties as administrative.

10. Respondent described her pain as a six on a scale of one to ten. When her pain is at its worst, she "cannot move her hands" and her pain is a nine of ten. Her hands are numb, especially in the mornings, and are in constant pain. Respondent filled out a health questionnaire and answered Dr. Khasigian's questions. She denied experiencing any other health complications, including asthma, chronic cough, bronchitis, depression or anxiety. She did tell Dr. Khasigian, however, that she had psychological evaluations and "a history of depression and anxiety."

11. Dr. Khasigian administered a physical exam of respondent. He explained that "brachial neuritis" is a "vague, non-specific term for irritation of the nerves in the upper extremities." To confirm the diagnosis, he looked for physical signs, including abnormal reflexes or muscle atrophy, and found none. He inspected her thumb joints, and found no redness or swelling. Tests for carpal tunnel syndrome were negative. Respondent did not have decreased motor strength or nerve sensitivity. He administered a Jamar dynamometer test to determine grip strength, and measured respondent's grip as equal on both sides.

12. As a result of his examination, Dr. Khasigian opined that respondent had no disabling condition, and no identifiable orthopedic diagnosis. His review of her medical history did not suggest otherwise. He further opined that respondent is not substantially incapacitated from the performance of her job duties due to her normal physical exam. Respondent's subjective complaints had no basis in a physical or structural abnormality.

**INTERNAL MEDICINE IME, PATRICIA WIGGINS, M.D., M.P.H.**

13. CalPERS retained Patricia Wiggins, M.D., M.P.H. to conduct an IME of respondent regarding her internal complaints related to chemical exposure and asthma. Dr. Wiggins is board-certified in occupational and internal medicine. She submitted a report dated November 27, 2018, and testified at hearing.

14. Dr. Wiggins evaluated respondent on November 27, 2018. She took respondent's history, reviewed limited medical records, read respondent's job description, and performed a physical examination. Respondent complained of exposure at work to fumes of various sorts, including diesel exhaust, cleaning products, refrigerator-coolant fumes that flowed through the HVAC vents, paint fumes during construction projects, and mold. She filed several complaints with California Office of Occupational Safety and Health (Cal/OSHA) and the National Institute for Occupational Safety and Health (NIOSH). On three occasions, Cal/OSHA's air monitoring team responded, and results were normal. Respondent reported to Dr. Wiggins that Cal/OSHA's air monitoring results were normal because "the issue had already been resolved by the time the monitoring team came to test the air." Respondent was unable to describe specific times or circumstances of exposure.

15. Dr. Wiggins' physical examination and respondent's account of her medical history revealed that she did not have wheezing or chronic cough. She has no history of chronic or recurrent bronchitis or pneumonia. She has not required inhaled bronchodilators, and a diagnosis of asthma has not been verified. Her medical records reveal consistently normal oxygen saturation rates. Dr. Wiggins detected no expiratory wheezing or prolongation of the respiratory phase.

16. Respondent reported that she lives with cats and is not allergic to pet dander. Dr. Wiggins explained that a first step for someone complaining of "allergic-like reactions," is allergy testing to eliminate potential irritants such as pets and environmental allergens. Respondent has not undergone allergy testing.

17. Dr. Wiggins explained that reactive airway dysfunction (RAD) is a "default diagnosis" that family practitioners use to describe a complaint of respiratory symptoms that are not explained by asthma or pneumonia. Doctors can use the descriptor as a mechanism to order additional testing. Asthma is often diagnosed using a spirometer test.<sup>2</sup> Respondent has not had this test completed. Her doctor attempted the test, but respondent did not complete it because it was uncomfortable.

18. Dr. Wiggins opined that respondent is not substantially incapacitated for the performance of her duties based asthma and chemical exposure sensitivity. The evidence showed that Cal/OSHA's air testing was negative on three occasions. Additionally, respondent's oxygen saturation rate was consistently normal over several years. Were respondent in respiratory distress, Dr. Wiggins would expect her oxygen level to fall due to a lung problem. Respondent did not have any ongoing symptoms of respiratory distress, nor did she have a diagnosis of asthma. She did not suffer from a chronic cough, recurring bronchitis, or pneumonia. Dr. Wiggins found no objective evidence to support respondent's subjective complaints.

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<sup>2</sup> A spirometer tests expiratory lung capacity by measuring how much air the patient inhales, how much the patient exhales, and how quickly the patient exhales.

## **Respondent's Evidence**

19. Respondent worked for the Department for 17 years prior to retirement. Throughout her tenure, she experienced the effects of chemical smells in the workplace. On several occasions she filed complaints and informed her supervisors she could not be present at work under those conditions. She also filed complaints with Cal/OSHA and NIOSH, which resulted in air monitoring and testing on three occasions.

20. Respondent submitted several documents that purportedly support her claim of chemical sensitivity and asthma. The documents contain a variety of single pages culled from multi-page documents, including medical records, workers' compensation findings, and letters regarding her symptoms. She presented emails documenting that other employees experienced symptoms from the workplace air quality as well. She was approved to wear a respirator at work, and though the Warden would not approve the device, respondent also emailed her supervisor stating she did not know how often she would be able to wear it due to "awkwardness and stigmatization." The totality of the documentation respondent presented evidences that she may have experienced irritation from the air quality while she was working, but it did not establish that she had diagnosable conditions that would support a claim of substantial disability from performing job duties.

21. Regarding her bilateral wrist condition, respondent explained that on May 11, 2017, there was a smell in her unit as well as a suicidal inmate, and she was attempting to leave her desk quickly. Prior to leaving, she attempted to finish typing emails quickly and her hands began to cramp; she was "not the same after that." She believed poor ergonomics over a long period of time also contributed to her orthopedic condition. Respondent stated that her symptoms of wrist pain and

cramping have continued for several years. She was unable to identify remedial measures she has taken for her wrist pain.

## **Discussion**

22. The burden was on respondent to offer sufficient competent medical evidence at hearing to support her disability retirement application. Respondent failed to do so. Based on the evidence presented, respondent failed to offer sufficient competent medical evidence to establish that at the time she applied for disability retirement, she was substantially and permanently incapacitated from performing the usual duties of a Rehabilitation Therapist (Art) based on her orthopedic (upper extremity, hand, wrist, brachial neuritis) or internal (chemical exposure and asthma) conditions. The testimony and reports of Drs. Wiggins and Khasigian established that respondent was not substantially incapacitated from performing her usual job duties. Respondent offered no competent medical evidence to counter those opinions. Consequently, her disability retirement application must be denied.

## **LEGAL CONCLUSIONS**

1. By virtue of respondent's employment as a Rehabilitation Therapist (Art), respondent is a state safety member of CalPERS subject to Government Code section 21151.

2. To qualify for disability retirement, respondent had to prove that, at the time she applied for disability retirement, she was "incapacitated physically or mentally for the performance of [her] duties." (Gov. Code, § 21156.) 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.

3. In *Mansperger v. Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 876, the court interpreted the term “incapacity for performance of duty” as used in Government Code section 20026 (formerly section 21022) to mean “the *substantial* inability of the applicant to perform his usual duties.” (Italics in original.)

4. When all the evidence in this matter is considered, respondent did not establish that her disability retirement application should be granted. She failed to submit sufficient evidence based upon competent medical opinion that, at the time she applied for disability retirement, she was permanently and substantially incapacitated from performing the usual duties of a Rehabilitation Therapist (Art) on the basis of her orthopedic (upper extremity, hand, wrist, brachial neuritis) or internal (chemical exposure and asthma) conditions. Consequently, her disability retirement application must be denied.

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**ORDER**

The application of respondent Trina S. Rahm for disability retirement is DENIED.

DATE: September 17, 2019

DocuSigned by:  
*Heather M. Rowan*  
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HEATHER M. ROWAN

Administrative Law Judge

Office of Administrative Hearings