ATTACHMENT A

THE PROPOSED DECISION

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:

KRISTIN L. ROOTS, Respondent,

and

THE CITY OF SACRAMENTO, Respondent

Case No. 2019-0272

OAH No. 2019060011

PROPOSED DECISION

Administrative Law Judge Ed Washington, Office of Administrative Hearings, State of California, heard this matter on October 1, 2019, in Sacramento, California.

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

There was no appearance by or on behalf of respondent Kristin L. Roots (Ms. Roots) or respondent the City of Sacramento (City).

Evidence was received, the record was closed, and the matter was submitted for decision on October 1, 2019.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED October 16 2019
JEH

ISSUE

Was Ms. Roots permanently and substantially incapacitated from performing her usual duties as a Program Developer for the City, due to a rheumatologic condition (fibromyalgia), psychological condition (depression, anxiety), and gastroenterological conditions (stomach issues, anemia, gastroesophageal reflux disease) when she applied for disability retirement?

FACTUAL FINDINGS

1. CalPERS properly served Ms. Roots and the City with the Statement of Issues and Notice of Hearing in this matter. The hearing proceeded as a default hearing pursuant to Government Code section 11520.

Ms. Roots's Disability Retirement Application

2. On January 11, 2018, Ms. Roots signed and filed with CalPERS a Disability Retirement Election Application (application), seeking disability retirement. She last worked for the City as a Program Developer and has the minimum service credit necessary to qualify for retirement.

3. In her application, Ms. Roots described her disability as "Depression, [Anxiety], Fibromyalgia, [and stomach] issues (driving issues after car accident)." Ms. Roots did not identify when the disability occurred, but indicated that her disability had "[b]een going on for a while." In response to the question on the application that asks how the disability occurred, Ms. Roots provided the following information: "just started getting worse and worse." She described her limitations and preclusions due to her condition, as: "Need to be home due to bathroom issues and no control of it." In

response to the question on the application that asks how her condition affected her ability to perform her job, Ms. Roots replied: "Sick all the time in pain a lot and bathroom issues and control." Ms. Roots also indicated that "[her] issues just keep getting worse and worse."

4. By letter dated December 27, 2018, CalPERS informed Ms. Roots that her application was denied. The letter also advised Ms. Roots of her right to appeal the denial. By letter dated January 21, 2019, Ms. Roots appealed from CalPERS's denial of her application. Ms. Roots's appeal letter includes the following statement:

> I want to place an appeal due to my ongoing medical issues and I have had more medical issues arise. The City of Sacramento encouraged me to take the following steps to receive medical retirement due to not being [able] to execute my duties on the job. While I was working, due to my medical issues I would be out for long periods of time. The reasonable accommodation person and my supervisor of Parks and Recreation stated I should apply for medical retirement because I was no longer able to be accommodated.

Duties of a Program Developer

5. According to the City's job description for the Program Developer position, an incumbent must: Plan and develop recreation, educational enrichment, child care, elder care, special events, or other community service activities and programs; select a variety of activities appropriate for children, adolescents, and adults; maintain positive and supportive relationships with customers; review program

plans with Program Leaders and instruct them in program implementation; participate in and evaluate the effectiveness of activities, events, and programs; select and arrange field trips, special events, and guest speakers; assist with the preparation of the site newsletter; lead, train, and assist with evaluating assigned staff; arrange for the purchase of materials and supplies, monitor supplies, and participate in cleaning and maintaining the facility, supplies, and equipment; inspect site and equipment for potential safety hazards and take corrective action to prevent injuries; serve as Program Coordinator in his/her absence; maintain records and develop monthly status reports; and perform related duties as required.

6. On March 19, 2018, a representative of the City completed a Physical Requirements of Position/Occupational Title form (physical job requirements form) for the Program Developer position. There was no evidence that Ms. Roots reviewed or signed that form.

7. According to the physical job requirements form, an incumbent must occasionally (up to three hours in a workday) engage in running, walking, kneeling, climbing, squatting, bending at the neck and waist, twisting at the neck and waist, reaching above and below shoulder level, pushing and pulling, fine manipulation, power grasping, simple grasping, repetitive use of hands, lifting or carrying up to 50 pounds, walking on uneven ground, driving, and working with biohazards. A Program Developer must also occasionally be exposed to dust, gas fumes, or chemicals, and use special visual or auditory protective equipment. The position requires an incumbent to frequently (from three to six hours in a workday) engage in sitting, standing, computer keyboard and mouse use, and be exposed to excessive noise, extreme temperature, humidity, and wetness. The position does not require crawling, lifting over 50 pounds,

working with heavy equipment, working at heights, operating foot controls, repetitive foot movements, or using special visual or auditory protective equipment.

CalPERS's Expert Reports

8. Scott T. Anderson, M.D., Ph.D. is a Clinical Professor of Medicine at the University of California, Davis, Division of Rheumatology, Allergy, and Clinical Immunology. Dr. Anderson has training and experience in the diagnosis and treatment of rheumatologic conditions. He is certified by the American Board of Internal Medicine in Internal Medicine, Rheumatology, and Geriatric Medicine and currently practices medicine in each field. Dr. Anderson has performed medical evaluations for a variety of entities, including CalPERS, the Workers' Compensation Appeals Board, and private disability insurance providers. He is also an expert consultant for the California Medical Board.

9. On August 17, 2018, Dr. Anderson performed an Independent Medical Evaluation (IME) on Ms. Roots and prepared a 14-page report. His evaluation included a review of Ms. Roots's work history, job description, physical job requirements form, medical records, symptoms, and a physical examination. In his report, Dr. Anderson described Ms. Roots's primary complaint as "fibromyalgia," in addition to a reported history of "fibromyalgia, depression, anxiety and stomach issues." Ms. Roots reported that she experienced pain in her lower back and legs and that fibromyalgia makes it difficult for her to work because she "cannot sit there [and] need[s] to elevate her legs." She also reported that chronic pain, malaise and fatigue interfere with her ability to work. She stated that she can walk and sit without issue, but has difficulty performing any lifting because her back "goes out," and she occasionally gets dizzy when she bends, stoops, walks or sits. Ms. Roots also complained of periodic stomach

irritation. Ms. Roots's medical records also indicate she has a history of anemia, high blood pressure, stomach problems, and fibromyalgia.

10. Dr. Anderson noted that Ms. Roots had no history of rheumatoid disease, systemic lupus, inflammatory myopathy, crystal-induced arthropathy, congestive heart failure, end stage liver disease, ulcerative colitis, or Crohn's disease. There were no noteworthy abnormalities detected during Ms. Roots's physical examination. When examining Ms. Roots's extremities, Dr. Anderson noted her fibromyalgia trigger points were "non[-]tender with no trigger response in 18 out of 18 locations." He also noted that Ms. Roots could ambulate, sit and stand without difficulty, but reported some dizziness upon lying down for examination." Ms. Roots's upper and lower extremities were symmetrical when comparing the right side to the left, and hand strength measurements were normal for a right-hand-dominant person. After completing the examination of Ms. Roots and reviewing her medical records, Dr. Anderson diagnosed her as follows:

1. Obesity with deconditioning.
2. Hypertension.
3. Gastroesophageal reflux disease.
4. Iron deficiency anemia.
5. Dupuytren's contraction, right hand.[1]

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[1] The MedlinePlus Medical Dictionary defines "Dupuytren's contracture" as "a condition marked by fibrosis with shortening and thickening of the palmar

11. In the "Response to Claim Specific Requests" section of his IME report, Dr. Anderson opined there were no specific job duties Ms. Roots could not perform, and therefore, she was not substantially incapacitated from performing her job duties as a Program Developer for the City. Dr. Anderson noted that although Ms. Roots might have some difficulty with manipulating heavy objects due to her right hand condition, that difficulty is not significant enough to constitute substantial incapacitation from performing her job duties. He also noted that Ms. Roots's other conditions are general primary care internal medicine illnesses or disorders that do not preclude her from performing the usual job duties of a Program Developer for the City.

12. Alberto G. Lopez, M.D., is a board-certified adult psychiatrist. He has been a practicing psychiatrist since 1983. On November 1, 2018, Dr. Lopez performed an IME on Ms. Roots and prepared a 10-page IME report. The IME was for the purpose of completing a psychiatric evaluation only, and included a review of Ms. Roots's history, a review of her medical file, and a mental status examination. Ms. Roots also completed a battery of tests that included the Minnesota Multiphasic Inventory-2 (MMPI-2) test. In his report, Dr. Lopez described the MMPI-2 as follows:

> The MMPI-2 is a psychological inventory designed to assess a number of the major patterns of personality and emotional disturbances. The test provides subjective scores and profiles determined from well-documented national norms that were re-standardized in 1989.

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aponeurosis resulting in flexion contracture of the fingers into the palm of the hand." (http://c.merriam-webster.com/medlineplus/Dupuytren's).

13. In the "Psychological Testing Results" section of his IME report, Dr. Lopez noted that Ms. Roots responded to the MMPI-2 test by omitting 24 items, which weakened the validity of the test without invalidating it. The responses Ms. Roots did provide "suggested a somatoform disorder in the context of dependent personality traits."[2]

14. Dr. Lopez also reviewed Ms. Roots's application for disability retirement, physical job requirements form, job description, multiple Sutter Health treatment notes, and a Physician's Report of Disability prepared by her primary treating physician, James Moore, M.D. Dr. Moore's report apparently specifies that Ms. Roots is "unable to complete any of her duties due to chronic pain which is poorly controlled," and reportedly includes diagnoses of "fibromyalgia, multiple tender spots, chronic pain secondary to fibromyalgia, anxiety and depression, and flat affect." After completing the evaluation, Dr. Lopez diagnosed Ms. Roots as follows:

1. 311.00/F32.9 - Depression Unspecified.

2. 300.00/F41.9 - Anxiety Disorder Unspecified.

3. 300.29/F40.248 - Specific Phobia, motor vehicles.

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[2] The MedlinePlus Medical Dictionary defines "somatoform disorder" as "any of a group of psychological disorders marked by physical complaints for which no organic or physiological explanation is found and for which there is a strong likelihood that psychological factors are involved." (http://c.merriam-webster.com/medlineplus/somatoform).

15. In the section of his report titled "Answers to Specific Questions from the Claims Examiner," Dr. Lopez noted that although the Program Developer job description does not specifically identify driving as a job duty, Ms. Roots reported she must occasionally drive while working to attend off-site activities. The physical job requirements form also specifies that Ms. Roots must occasionally drive as part of her job duties. Dr. Lopez opined that regarding Ms. Roots's psychiatric conditions, she is unable to drive vehicles but may be driven in vehicles. He found no other work activities that Ms. Roots could not perform and concluded that her level of depression and anxiety, nor any other psychiatric condition, did not preclude her from performing her usual job duties.

16. Patricia L. Wiggins, M.D., M.P.H., is a board-certified physician specializing in internal medicine and occupational medicine. She performs Qualified Medical Evaluations and Independent Medical Evaluations for the State of California through Pacific Evaluations, Inc. She also works as voluntary clinical faculty for the University of California, Davis.

17. On December 13, 2018, Dr. Wiggins performed an IME on Ms. Roots and prepared a nine-page report. Dr. Wiggins's report specifies that she evaluated Ms. Roots for "anemia, and stomach issues that include irritable bowel syndrome and gastroesophageal reflux [disease]" (GERD). Her evaluation included an interview with Ms. Roots to discuss her symptoms and how they affected her ability to perform her job duties, a review of Ms. Roots's job description, physical job requirements form, medical records, and a physical examination.

18. According to Dr. Wiggins's report, Ms. Roots stated that she had been diagnosed with irritable bowel syndrome and that stomach issues affected her ability to work. She specified that her gastrointestinal (GI) illness causes intermittent severe

stomach pain, stomach cramping, nausea, vomiting, and uncontrollable diarrhea. These symptoms reportedly occurred every few months and lasted for approximately two weeks. At Ms. Roots's last job site the bathroom was located across the playground and she could not reach the bathroom in time to relieve herself from cramping and diarrhea. Ms. Roots could not identify any food, medication, or infections that caused these symptoms and indicated that "maybe [they were] stress related."

19. Dr. Wiggins's report specifies that a GI consult in Ms. Roots's medical records indicates she had a normal upper GI endoscopy and did not complete a colonoscopy, and that a recent pelvic ultrasound study was normal. Medical records also reflected that Ms. Roots has been diagnosed with anemia and has been diagnosed with GERD controlled with medication. There was no indication these conditions affected Ms. Roots's ability to perform her job duties.

20. Dr. Wiggins's report reflects that Ms. Roots's physical examination produced results that were largely normal for an individual of her size, weight, and age, with the exception of her right hand Dupuytren's contraction. After completing the evaluation, Dr. Wiggins diagnosed Ms. Roots as follows:

1. Depression and anxiety deferred to psychiatry.
2. Irritable bowel syndrome.
3. History of anemia.
4. History of acid reflux.

21. In the "Opinion" section of her IME report, Dr. Wiggins opined that Ms. Roots's symptoms of irritable bowel syndrome with complaints of diarrhea and

constipation, acid reflux, nausea and vomiting are manifestations of an underlying psychiatric problem. She noted the records reviewed indicate that Ms. Roots desired to be excused from work due to stress but had not completed GI testing requested by her physicians to evaluate her subjective GI complaints. Dr. Wiggins noted there was no medical testing that produced objective findings for uncontrolled irritable bowel syndrome, uncontrolled gastroesophageal reflux disease, or a level of anemia that would preclude working. Dr. Wiggins opined that it is likely Ms. Roots's GI complaints have been exaggerated in an attempt to avoid going to work. Dr. Wiggins concluded that Ms. Roots was not substantially incapacitated from performing her job duties as a Program Developer for the City based on internal medical conditions, GI problems or anemia.

Discussion

22. Ms. Roots had the burden to present competent medical evidence to establish that she is permanently and substantially incapacitated for the performance of her usual job duties. She did not appear at hearing and did not submit evidence to meet her burden. Ms. Roots's Dupuytren's contraction may make it more difficult to perform some job duties and that her anxiety precludes her from driving, but the evidence did not support that those difficulties were significant enough to establish that she is substantially incapacitated for the performance of her duties as a Program Developer for the City. Consequently, her disability retirement application must be denied.

LEGAL CONCLUSIONS

1. By virtue of her employment Ms. Roots is a local miscellaneous member of CalPERS and subject to Government Code section 21150. Ms. Roots has the minimum service credit necessary to qualify for retirement.

2. Government Code section 20026, in relevant part, provides:

> "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. To qualify for disability retirement, Ms. Roots had to offer sufficient evidence, based upon competent medical opinion, to establish that, when she applied, she was permanently and substantially incapacitated for the performance of her usual duties as a Program Developer for the City. Ms. Roots failed to offer such evidence. Consequently, her disability retirement application must be denied.

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ORDER

The application of Kristin L. Roots for disability retirement is DENIED.

DATE: October 14 2019

DocuSigned by:
Ed Washington
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ED WASHINGTON

Administrative Law Judge

Office of Administrative Hearings