

**ATTACHMENT A**

**THE PROPOSED DECISION**

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

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

**LYNETTE HOLLINSHED and**

**EMPLOYMENT DEVELOPMENT DEPARTMENT, Respondents.**

**Case No. 2019-0603**

**OAH No. 2019080978**

**PROPOSED DECISION**

Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 3, 2020, in Sacramento, California.

Preet Kaur, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Lynette Hollinshed (respondent) appeared and represented herself.

There was no appearance by or on behalf of the Employment Development Department (Department). CalPERS established that it properly 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).

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
FILED January 15, 2020

K. Pasley

Evidence was received, the record was closed, and the matter was submitted on January 3, 2020.

## **ISSUE**

Is respondent substantially incapacitated from performing her duties as an Employment Program Representative for the Department based on a psychiatric condition (depression and post-traumatic stress disorder)?

## **FACTUAL FINDINGS**

### **Respondent's Application**

1. CalPERS received respondent's Disability Retirement Election Application on December 20, 2017. In her application, respondent described her disability as: "depression, posttraumatic stress and acute stress disorder." She stated that her disability "started at the end of 2009, and ongoing until December 2017." Respondent stated that her condition affects her ability to perform her job because of "poor concentration, confusion on following direction, severe fears and anxiety of being falsely accused, and treated different than other employees." Respondent retired for service effective December 14, 2017, and has been receiving her retirement allowance from that date.

### **Duties of an Employment Program Representative**

2. On June 28, 2017, respondent signed a Position Statement for an Employment Program Representative. A summary of the position states that the Employment Program Representative "assists customers through the delivery method

of self-service, facilitated self-help, and staff assisted services . . . .” The essential duties include customer service (30 percent), reemployment services and eligibility assessment (30 percent), serve as a job search workshop/job club leader (20 percent), provide personalized job search assistance (10 percent), and act as a complaints specialist (10 percent).

### **Respondent’s Evidence**

3. Respondent testified that she began working for the State of California in 2001. In 2008 or 2009, she transferred from her position in Sacramento to a position with the Department in Modesto, where she received training to serve as an Employment Program Representative. Respondent enjoyed her job in Modesto until the Deputy Division Chief began to target her. Respondent tried to be a team player, but the Deputy Division Chief isolated her from other employees and made racist comments about respondent. The Deputy Division Chief also required other managers to monitor and unfairly write-up respondent.

4. Respondent does not know why the Deputy Division Chief targeted her. Respondent would often cry before and after work because of workplace stress. She would often go to the bathroom and cry at work. Eventually, respondent felt so stressed as a result of her treatment at work that she went out on temporary disability three times during 2015 through 2017. Respondent wanted to continue with her job until retirement age. She feels that she is entitled to disability retirement because of the stress and resulting symptoms due to the unfair treatment she endured from the Deputy Division Chief.

5. Respondent feels that she cannot perform the duties of an Employment Program Representative. The mistreatment she endured at the Department broke the

trust she might have for any employer. Respondent fears how an employer would treat her if she returns to work. The only work respondent feels able to do is to volunteer at her church.

6. Respondent began psychiatric treatment with Muhammad Zia, MD, in October 2015. Dr. Zia diagnosed respondent with major depression and posttraumatic stress disorder (PTSD), and treated her with mirtazapine and lorazepam. Respondent submitted a Medication Eval/Monitoring form dated June 26, 2019, signed by Dr. Zia, stating that respondent is "incapacitated to work at this time" and "she is considered permanently disabled."<sup>1</sup> Respondent is no longer under the care of Dr. Zia. He recently retired and provided respondent with contact information for other psychiatrists.

7. Respondent submitted three affidavits dated May 2016, signed by former Department employees, with a case caption indicating that they were prepared for submission in a State Personnel Board matter involving employees other than respondent.<sup>2</sup> The affidavits set forth in detail how the Deputy Division Chief systematically targeted respondent and others by forcing the floor manager and other staff to observe and "write-up" respondent and others without good cause, and that the Deputy Division Chief repeatedly used racist language in reference to respondent.

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<sup>1</sup> The Medication Eval/Monitoring form signed by Dr. Zia was admitted into evidence as administrative hearsay pursuant to Government Code section 11513, subdivision (d), to supplement or explain other evidence, but is not sufficient in itself to support a factual finding.

<sup>2</sup> The affidavits were admitted into evidence as administrative hearsay pursuant to Government Code section 11513, subdivision (d).

8. Respondent called LaVern Fields to testify on her behalf. Mr. Fields and respondent live together. Mr. Fields testified that respondent is withdrawn at home and has frequent crying spells. Respondent suffered significant emotional distress from the discriminatory treatment she endured while working at the Department. Mr. Fields often saw respondent cry before and after work because of the stress. The emotional distress respondent suffered at work has, in Mr. Fields' opinion, broken respondent down. The situation simply overpowered her. Respondent now struggles to accomplish normal everyday tasks. For example, respondent is no longer able to concentrate sufficiently to drive a car. Respondent previously led an active life, including motorcycle riding, fishing, shopping with friends, and volunteering at a center for homeless women. Mr. Fields does not believe respondent is capable of returning to work. She is afraid her employer will once again target her and set her up for failure.

### **CalPERS' Evidence**

9. CalPERS retained Roy L. Curry, MD, to conduct an independent medical evaluation (IME). Dr. Curry is certified by the American Board of Psychiatry and Neurology. He conducted an IME on March 18, 2019, and issued an IME report on that date. Dr. Curry issued a supplemental IME report on July 17, 2019, which reflects his review of records not provided for the original IME.

10. On March 18, 2019, Dr. Curry took respondent's history, including the history of workplace discrimination. He noted respondent's symptoms including decreased energy, decreased confidence, difficulty sleeping and significant weight loss. He also reviewed respondent's medical history, and noted that Dr. Zia diagnosed respondent with major depression and PTSD. Dr. Curry conducted a mental status examination which he recorded in his IME report, in part, as follows:

Her thoughts were clear goal-directed and goal-reached. . . . There certainly is a sense of being mistreated and taken advantage of and definite suspiciousness . . . . She does not trust returning to work.

Her mood was characterized by frustration, sadness, anger, and bitterness. She seemed angrier than anxious and depressed. She has some loss of self-esteem but more so due to being a victim. She reported crying spells every 1-3 days, but was quite composed. She has modest anxiety and depression.

Judgment and insight were grossly intact. Abstracting abilities were intact. Reality testing mechanisms were grossly intact. Attention, concentration, and memory span was grossly intact.

11. Dr. Curry diagnosed respondent in his IME report as having dysthymia and anxiety (mild). Dr. Curry testified that it is debatable whether respondent has major depression, as diagnosed by Dr. Zia, or dysthymia as diagnosed by him. Dr. Curry disagrees with Dr. Zia's diagnosis of PTSD because Dr. Zia did not identify trauma that would cause PTSD. Dr. Curry testified that the major depression or dysthymia decreased respondent's efficiency and effectiveness, but has not caused her to be disabled from working.

12. Dr. Curry reviewed the job requirements of an Employment Program Representative. He concluded in his March 18, 2019 IME report, his supplemental IME report, and his testimony at hearing that there are no job duties that respondent is

unable to perform, and that respondent is not substantially incapacitated from performing the duties of an Employment Program Representative.

## **Discussion**

13. CalPERS presented competent medical evidence through Dr. Curry's testimony and IME reports that respondent is not substantially incapacitated from performing the duties of an Employment Program Representative. Respondent did not present competent medical evidence to the contrary.

14. Respondent testified persuasively that she had very real and significant reasons to feel unfairly targeted at her work with the Department, and that as a result she felt and continues to feel depressed and anxious. She did not, however, present competent medical evidence that she is substantially unable to perform the duties of an Employment Program Representative.

15. Respondent introduced a written medical evaluation by Dr. Zia dated June 26, 2019, which states that respondent is "incapacitated to work at this time" and that "she is considered permanently disabled." Dr. Zia's written evaluation was admitted to supplement or explain other evidence, but is not sufficient in itself to support a factual finding.<sup>3</sup> For this reason, Dr. Zia's written evaluation does not provide sufficient evidence to establish that respondent is "incapacitated to work" or "permanently disabled."

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<sup>3</sup> *Ante*, footnote 1.

## LEGAL CONCLUSIONS

1. 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.

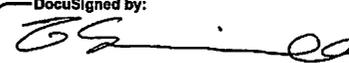
2. In *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876, the court interpreted the term "incapacity for performance of duty" as used in Government Code section 20026 (formerly section 21022) to mean "the *substantial* inability of the applicant to perform [her] usual duties." (Italics in original.) An applicant for disability retirement must submit competent, objective medical evidence to establish that, at the time of the application, he or she was permanently disabled or incapacitated from performing the usual duties of his or her position. (*Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 697.)

3. *Mansperger*, and *Harmon* are controlling in this case. The burden was on respondent to present competent medical evidence to show that, as of the date she applied for disability retirement, she was substantially unable to perform the usual duties of an Employment Program Representative due to a psychiatric condition (depression and post-traumatic stress disorder). Based on the evidence as a whole, respondent did not meet this burden. For this reason, her application for disability retirement must be denied.

## ORDER

The application of respondent Lynette Hollinshed for disability retirement is  
DENIED.

DATE: January 15, 2020

DocuSigned by:  
  
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TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings