

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:**

DEBRA S. HARDER, and

**DEUEL VOCATIONAL INSTITUTION, CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION,**

Respondents.

Case No. 2019-0393

OAH No. 2019080521

PROPOSED DECISION

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on February 18, 2020, in Oakland, California.

Staff Attorney Helen L. Louie represented complainant California Public Employees' Retirement System.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED March 12 20 20
JLH

Sherrí Lira, Attorney at Law, represented respondent Debra S. Harder, who was present.

There was no appearance on behalf of respondent Deuel Vocational Institution, California Department of Corrections and Rehabilitation.

The record closed and the matter was submitted on February 18, 2020.

ISSUE AND SUMMARY

Whether respondent Harder was incapacitated to perform her usual and customary duties as a clinical social worker for respondent Deuel Vocational Institution, California Department of Corrections and Rehabilitation, on the basis of a psychological condition, on October 30, 2018, when she filed an application for industrial disability retirement.

Respondent Harder contends that cumulative industrial exposure to stressful events and environmental toxins rendered her substantially incapacitated from performing her usual and customary duties as a clinical social worker. Respondent did not submit evidence sufficient to establish her claim, nor does the evidence submitted by CalPERS establish her claim.

FACTUAL FINDINGS

1. On July 11, 2019, Keith Riddle, Chief of the Disability and Survivor Benefit Services Division of the California Public Employees' Retirement System (CalPERS), filed the statement of issues in his official capacity on behalf of complainant CalPERS.

2. Respondent Debra S. Harder was employed by respondent Deuel Vocational Institution (DVI), California Department of Corrections and Rehabilitation (CDCR) as a clinical social worker. By virtue of that employment, respondent Harder was a state safety member of CalPERS, subject to Government Code section 21151.¹

3. On October 30, 2018, respondent Harder submitted an application for service retirement pending industrial disability retirement. She claimed disability on the basis of psychological conditions. Respondent Harder was retired for service effective November 1, 2018, and has been receiving her retirement allowance from that date.

4. On March 19, 2019, CalPERS sent respondent Harder a letter denying her application for industrial disability retirement. Respondent Harder timely appealed and this proceeding followed.

Respondent Harder's Background and Job Duties

5. Respondent Harder is 61 years old. She earned a master's degree in social work in 1995, was licensed out of state in 1997, and became licensed as a clinical social worker in California in 2009. She worked as a clinical social worker for CDCR for approximately 11 years; 7 years in Wasco State Prison and then 4 years at DVI.

6. The essential functions and job duties of respondent Harder's position as a clinical social worker at DVI included: performing assessments of new and continuing prisoners, developing treatment plans, monitoring progress, and performing case reviews; coordinating delivery of services with custody staff; providing treatment

¹ All statutory references are to the Government Code unless otherwise stated.

directly to prisoners; and providing crisis intervention assessment and services. The position required her to perform her duties during “physically, mentally, and emotionally stressful situations encountered on the job without compromising her health, welfare, and well-being, or that of fellow employees, patients, or inmates.” She worked inside DVI and was required to tolerate extremely loud and chaotic environments.

Respondent Harder’s Workplace Difficulties

7. Respondent Harder experienced asthma in the 1990’s. She endured multiple significant stressors in the last decade, including the death of her adult daughter in October 2011 after a long illness. She had a difficult time after her daughter’s death and began taking Lexapro (escitalopram), a selective serotonin reuptake inhibitor mood-stabilizer.

8. Respondent Harder reports terrible working conditions at DVI, including: rodent infestations; offices that were rarely cleaned; water and sewage leaks; poor air-quality, including dust and mold; duplicative paperwork; unrealistic productivity requirements; lack of breaks; omnipresent emotional stress; regular physical danger; and inadequate safety precautions. She was also concerned about asbestos in the ceilings. There were two to five suicides per year at DVI. The position was extremely stressful.

9. On May 16, 2016, respondent Harder experienced chest pain at work, and sought medical attention. Her blood pressure was measured as elevated and she was transported via ambulance to the emergency room (ER) of a nearby hospital. There, she reported to the treating physician that she believed the episode was related to her

deceased daughter's birthday and she had experienced a similar episode in 2012.² She was discharged. At some point that day or the next, she was prescribed medication and an inhaler.

10. On May 20, 2016, she was seen in an occupational health clinic and reported that the episode was triggered by work stress. She returned to work shortly thereafter.

11. It appears that respondent Harder received psychotherapy treatment in the months after the May 2016 episode, but the record was unclear on the duration.

12. In January 2018, respondent Harder's office was moved to a different area inside DVI, which housed even more violent and dangerous prisoners. She reports that she experienced difficulty breathing due to the poor air quality. She complained to her supervisors, but little changed. She concluded that she could not continue to work at DVI due to the "filth" and the impact on her breathing.

13. Respondent Harder's last day working at DVI was in March 2018.

14. Respondent Harder's current medications include: Lexapro, 20mg per day, and Sinulair, 10mg, an inhaler to prevent allergies. She no longer needs to use her emergency inhaler except for bronchial infections. She recently wrote a book and as of the date of hearing had been working for seven months in a temporary position as a licensed social worker for Kaiser Permanente.

² At hearing, respondent Harder testified that that the physician was called away so she did not have the chance to further explain that she had experienced conflict with a supervisor just minutes prior to the onset of the chest pain.

15. Respondent Harder believes that it would negatively affect her health to resume her former duties as a clinical social worker at DVI. She reports that she had difficulty breathing at DVI and also could not handle the workload.

Dr. Kipperman's Reports

16. Respondent Harder submitted eight reports of Alan L. Kipperman, M.D. Dr. Kipperman did not testify at hearing. His reports are not sufficient by themselves to support a finding of disability.

Expert Testimony of Dr. Curry

17. Roy L. Curry, M.D., authored a report dated February 7, 2019, and testified at hearing. Dr. Curry has been a licensed physician in California since 1972. He is board-certified in psychiatry and neurology.

18. On February 7, 2019, at the request of CalPERS, Dr. Curry evaluated respondent Harder's capacity to perform her usual and customary duties. Dr. Curry interviewed and examined respondent Harder, and also reviewed respondent Harder's job description and medical records. Dr. Curry also administered several psychological tests to her.

19. Dr. Curry found respondent Harder to be a reliable historian. However, Dr. Curry opines that respondent Harder is not substantially incapacitated for the performance of her duties as a clinical social worker for DVI on the basis of a psychological condition. Dr. Curry explained that her mental status, psychological testing, and work history do not reflect such incapacity. He opines that she exhibits some dysphoria, but she is very resilient and she has excellent coping abilities, having

endured her daughter's untimely passing while continuing to perform her work duties. Dr. Curry opines that respondent Harder is able to perform each of her former duties.

Ultimate Factual Findings

20. Respondent Harder did not establish that she was substantially incapacitated for the performance of her former duties as a clinical social worker for DVI on the basis of a psychological condition on October 30, 2018, when she filed her application for industrial disability retirement. The opinion of Dr. Curry was persuasive and unrebutted by evidence competent to support a finding of disability.

LEGAL CONCLUSIONS

1. The applicant for a disability retirement has the burden of proving an incapacitating condition, and the standard of proof is a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051; Evid. Code, § 115.).

2. A CalPERS state safety member may retire for industrial disability if she becomes "incapacitated for the performance of duty" as the result of an industrial disability. (§ 21151.) The term "incapacitated for the performance of duty" is defined as a "disability of permanent or extended and uncertain duration . . . on the basis of competent medical opinion." (§ 20026.) An applicant is "incapacitated for performance of duty" if she is substantially unable to perform the usual duties of her position. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876; accord *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 859-860.)

3. Respondent Harder did not establish that she was substantially incapacitated for the performance of her duties as a clinical social worker for DVI on the basis of a psychological condition on October 30, 2018, when she filed her application for industrial disability retirement. (Factual Finding 20.)

ORDER

The application of Debra S. Harder for industrial disability retirement is denied.

DATE: March 12, 2020

DocuSigned by:
Michael C. Starkey
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MICHAEL C. STARKEY

Administrative Law Judge

Office of Administrative Hearings