

**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 Disability Retirement of:**

**LLOYD A. GETCHELL, JR., and CALIFORNIA HIGHWAY  
PATROL, Respondents.**

**Case No. 2019-0239**

**OAH No. 2019090573**

**PROPOSED DECISION**

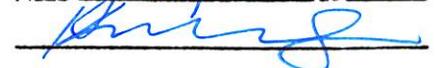
Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on June 24, 2020, in Sacramento, California.

Helen L. Louie, Attorney, represented the California Public Employees' Retirement System (CalPERS).

There was no appearance by or on behalf of Lloyd A. Getchell, Jr., (respondent) or the California Highway Patrol (CHP). CalPERS established that it duly served respondent and the CHP with a Notice of Hearing. Consequently, this matter proceeded as a default hearing against respondent and the CHP pursuant to Government Code section 11520, subdivision (a).

PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED July 24 20 20



Evidence was received, the record was closed, and the matter was submitted for decision on June 24, 2020.

## **ISSUE**

Is respondent substantially incapacitated from performing his usual and customary duties as an Automotive Technician II for the CHP based on orthopedic (pelvis, low back, right thigh, right knee, right ankle, and right foot) and psychiatric (Xanax withdrawal, memory problems, posttraumatic stress disorder, and anxiety) conditions?

## **FACTUAL FINDINGS**

1. Respondent was employed by the CHP as an Automotive Technician II. By virtue of his employment, respondent is a state miscellaneous member of CalPERS subject to Government Code section 21150.

### **Applications by CHP and Respondent**

2. On or about February 8, 2018, the CHP filed an application for disability retirement on behalf of respondent, and requested that CalPERS determine whether respondent is substantially incapacitated from the performance of his duties. The application described respondent's disabilities "hip, hypertension, anxiety/depression, back, ankle."

3. On April 16, 2018, CalPERS received respondent's Disability Retirement Election Application. In his application, respondent described his disability as "right acetabular fracture, fractured pelvis, low back injury, right hip, right thigh, right knee,

right ankle and foot, numb right thigh, numb toes, nerve damage, severe pain standing, sitting and walking, brain injury due to Xanax withdrawal, memory problems, possible PTSD, high blood pressure, anxiety, migraine headache." He stated that his disability occurred on December 9, 2014, when he "fell at work off curb in parking lot." Respondent stated that his condition affects his ability to perform his job because of "little physical stamina to complete tasks, inconsistent and unreliable workday due to pain and fatigue, anxiety, lack of focus and attention to detail, memory impaired."

## **Duties of an Automotive Technician II**

4. The Duty Statement for an Automotive Technician II states that the essential functions include responsibility to oversee the daily operation of the Headquarters Support Unit with a fleet of approximately 180 vehicles, schedule maintenance and repair service, negotiate with vendors, perform quality control of work performed by vendors, diagnose problems with vehicles, schedule and deliver vehicles to vendors, coordinate the exchange of vehicles, coordinate vehicle cleaning, and obtain vehicles for special assignments. Other essential functions include, but are not limited to: assist with special assignments, assist with vehicle towing, prepare records of all vehicle activity, coordinate preparation of required reports, and track motor pool vehicle inventory.

5. The physical requirements for the position of an Automotive Technician II include frequent sitting, standing, walking, twisting (neck and waist), simple grasping, repetitive use of hands, lifting/carrying up to 25 pounds, driving, exposure to extreme temperature, exposure to dust and fumes, and operation of foot controls. The physical requirements also include occasional crawling, kneeling, climbing, squatting, bending (neck and waist), reaching above and below shoulder, pushing and pulling, fine manipulation, power grasping, keyboard use, mouse use, lifting up to 75 pounds,

walking on uneven ground, working with heavy equipment, exposure to noise, working at heights, use of special protective equipment, and working with bio hazards.

## **CalPERS' Evidence – Expert Opinions**

6. CalPERS retained Robert Henrichsen, M.D., to conduct an independent medical evaluation (IME). Dr. Henrichsen is an orthopedic surgeon, and a fellow in the American Academy of Orthopedic Surgery. He conducted an IME on June 12, 2018, and issued an IME report on that date. He issued a supplemental IME report on January 10, 2019, which reflects his review of records not provided for the original IME. He testified at hearing regarding his findings.

7. On June 12, 2018, Dr. Henrichsen met with respondent and took his personal history, occupational history, past medical history, current complaints, and current symptoms. Dr. Henrichsen also reviewed respondent's medical records and physically examined respondent. Based on his examination of respondent and review of the information provided, Dr. Henrichsen diagnosed respondent as follows: (1) healed acetabular fracture, (2) arthritis of right and left hips, (3) right knee tendon pain without abnormal objective finding, (4) normal right ankle, (5) confusing toe numbness symptoms, (6) unfavorable power to weight ratio, (7) history of anxiety and depression, (8) degenerative arthritis of lumbar spine, (9) minimal degenerative disc disease at L5-S1, (10) symptoms poorly supported by objective findings, and (11) short left leg.

8. Dr. Henrichsen also reviewed the job requirements of an Automotive Technician II. Based on the information provided and his examination of respondent, Dr. Henrichsen concluded in his IME report that respondent's conditions were not occupationally limiting. Dr. Henrichsen further concluded that respondent was not substantially incapacitated from performing his duties as an Automotive Technician II.

9. On January 10, 2019, Dr. Henrichsen reviewed additional clinical records CalPERS provided him. The additional documents did not change Dr. Henrichsen's conclusions regarding respondent's occupational work capacity. Dr. Henrichsen again concluded in his supplemental IME report dated January 10, 2019, that respondent was not substantially incapacitated on an orthopedic basis from performing his duties as an Automotive Technician II.

10. CalPERS retained Alberto Lopez, M.D., M.P.H., to conduct an IME. Dr. Lopez is a psychiatrist and a Diplomate of the American Board of Psychiatry and Neurology. He conducted an IME on September 6, 2018, and issued an IME report on that date. He testified at hearing regarding his findings.

11. On September 6, 2018, Dr. Lopez met with respondent and took his personal history, occupational history, past medical history, current complaints, and social history. Dr. Lopez also reviewed respondent's medical records, and conducted a mental status exam and psychological testing. Dr. Lopez diagnosed respondent with Dysthymic Disorder Unspecified (mild depression).

12. Dr. Lopez also reviewed the job requirements of an Automotive Technician II. Based on the information provided and his examination of respondent, Dr. Lopez concluded in his IME report and in his testimony at hearing that respondent's conditions were not occupationally limiting. Dr. Lopez further concluded that respondent was not substantially incapacitated on a psychiatric basis from performing his duties as an Automotive Technician II.

## **Discussion**

13. CalPERS presented competent medical evidence through the testimony and IME reports of Dr. Henrichsen and Dr. Lopez. Both experts found insufficient

evidence to make a finding that respondent is substantially incapacitated from performing the duties of an Automotive Technician II. Their opinions were persuasive.

14. Neither respondent nor the CHP appeared at hearing or presented any evidence. In sum, because respondent and the CHP failed to offer any competent medical evidence to establish that, at the time respondent applied for disability retirement, he was substantially and permanently incapacitated from performing the usual duties of an Automotive Technician II, their applications must be denied.

## LEGAL CONCLUSIONS

1. To qualify for disability retirement, respondent had to prove that, at the time he applied for disability retirement, he was "incapacitated physically or mentally for the performance of his or 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 his 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

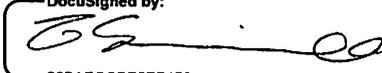
permanently disabled or incapacitated from performing the usual duties of his or her position. (*Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 697.)

3. *Mansperger*, and *Harmon* are controlling in this case. The burden was on respondent and the CHP to present competent medical evidence to show that, as of the date respondent applied for disability retirement, he was substantially unable to perform the usual duties of an Automotive Technician II due to an orthopedic or psychiatric condition. Based on the evidence as a whole, respondent and the CHP failed to meet this burden. For this reason, the disability retirement applications submitted by respondent and the CHP must be denied.

## ORDER

The applications for disability retirement filed by respondent Lloyd A. Getchell, Jr., and the CHP are DENIED.

DATE: July 24, 2020

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TIMOTHY J. ASPINWALL  
Administrative Law Judge  
Office of Administrative Hearings