

**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:**

**DAYNE R. MUELLER, Respondent**

**and**

**CITY OF OCEANSIDE, Respondent**

**Agency Case No. 2020-1410**

**OAH No. 2021030350**

**PROPOSED DECISION**

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by Microsoft Teams telephone/videoconference on October 18, 2021.

Charles Glauberman, Senior Attorney, represented complainant, Anthony Suine, Chief, Benefit Services Division, California Public Employees' Retirement System, State of California (CalPERS).

There was no appearance by or on behalf of respondent Dayne R. Mueller.

There was no appearance by or on behalf of respondent City of Oceanside.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on October 18, 2021.

## **ISSUE**

Is Dayne R. Mueller (respondent) substantially incapacitated from performing the usual and customary duties of a Maintenance Worker II?

## **FACTUAL FINDINGS**

### **Background**

1. At all times relevant to these proceedings, respondent was employed by the City of Oceanside as a Maintenance Worker II. By virtue of such employment, respondent is a local member of CalPERS.

2. On April 28, 2020, respondent submitted an application for disability retirement. As the basis for his disability, respondent claimed severe anxiety, depression, attention deficit hyperactivity disorder (ADHD), and insomnia. Respondent wrote that he has suffered from these conditions his entire life, but as a civil servant, the conditions have worsened over time. Over the last several years, he has been diagnosed with insomnia, leaving him exhausted and unable to operate heavy machinery or drive city vehicles. This has resulted in several accidents.

3. On September 17, 2020, respondent underwent an Independent Medical Examination (IME) conducted by psychiatrist, Katalin Bassett, M.D. By letter dated October 13, 2020, CalPERS notified respondent that based on a review of his medical

records and report by Dr. Bassett, CalPERS determined that his psychological condition was not disabling and his application for disability retirement was denied.

4. Respondent timely appealed the decision. This hearing ensued.

5. At date and time of the hearing, respondent had not joined the Microsoft Teams meeting despite having been provided notice of the date and time of the hearing and information for joining the conference by computer or telephone. Complainant's counsel advised that someone from his office called respondent, who said he would not be attending the hearing. The matter proceeded as a default as to both respondent and the City of Oceanside pursuant to Government Code section 11520.

### **Dr. Bassett's Independent Medical Examination**

6. Dr. Bassett completed a report September 17, 2020. The following is a summary of her report and curriculum vitae. Dr. Bassett completed her residency in psychiatry at the University of Southern California (USC) in 1989, followed by a fellowship in psychiatry and law. She is board-certified in psychiatry and has been in private practice since 1990. Dr. Bassett is an expert in the field of psychiatry.

7. Dr. Bassett evaluated respondent for CalPERS on September 17, 2020. Dr. Bassett's evaluation of respondent's condition was based on a review of the job description and physical duties of a Maintenance Worker II, medical records, a face-to-face interview, and psychological testing.

Respondent reported that he stopped working in January 2020 due to his psychological problems and sleep deprivation. Although he indicated having a long history of depression and anxiety, as well as ADHD, he did not indicate why these

psychiatric problems increased to the point of him not being able to work. His anxiety and depression were classified as mild. However, he indicated that due to his insomnia, he backed into some vehicles at work. Dr. Bassett took a detailed background/social history.

Dr. Bassett reviewed respondent's medical records that began in July 2019. Dr. Bassett noted it was unusual not to have any records before this time. The medical records documented respondent's difficulty sleeping. Several providers diagnosed respondent with generalized anxiety disorder, insomnia, and ADHD.

Dr. Bassett administered several psychological tests. The tests showed exaggeration. Dr. Bassett believed respondent completed the tasks haphazardly and without attention. She did not believe he put forth adequate effort based on his motivation to obtain a disability retirement. For example, the Minnesota Multiphasic Personality Inventory- 2 was invalidated due to exaggeration. The Millon Clinical Multiaxial Inventory-III also showed a great deal of exaggeration.

In conclusion, Dr. Bassett noted that respondent worked for the City for 12 years, but at age 49, claims to have suddenly developed severe insomnia such that he was no longer able to perform his job. Although he claims severe sleep disturbance, he never had a sleep study and there were no medical records to corroborate his claim of chronic sleep problems. Thus, Dr. Bassett could not take his claims at face value, especially considering his performance on the psychological tests, consistent with likely malingering. Moreover, respondent appeared able to take care of activities of daily living including coaching his son's baseball team, performing maintenance for the five sober living facilities he and his wife own, and performing other construction projects.

Dr. Bassett did not believe that respondent was unable to perform his job duties based on a psychological condition and was thus, not substantially incapacitated.

## LEGAL CONCLUSIONS

1. Absent a statutory presumption, an applicant for a disability retirement has the burden of proving that he or she is entitled to it by a preponderance of the evidence. (*Glover v. Bd. of Retirement* (1989) 214 Cal.App.3d 1327, 1332; Evid. Code, § 115.) In this matter, respondent is seeking a disability retirement. For that reason, respondent has the burden of establishing that he is substantially incapacitated from performing the usual and customary duties of a Maintenance Worker II.

### Applicable Statutes

2. Government Code section 20026 provides in part:

“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. An application to the Board of Administration (board) for retirement of a member for disability may be made by the governing body, or an official designated by the governing body, of the contracting agency, if the member is an employee of a contracting agency. (Gov. Code, § 21152.) On receipt of an application for disability retirement of a member . . . the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for the performance of duty.

4. Government Code section 21156, subdivision (a), provides in part:

(1) If the medical examination and other available information show to the satisfaction of the board . . . that the member in the state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability . . .

(2) In determining whether a member is eligible to retire for disability, the board . . . shall make a determination on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process. . . .


## **Evaluation**

5. Respondent had the burden of proving he is substantially incapacitated from performing the usual and customary duties of a Maintenance Worker II. Respondent did not appear at hearing or submit any evidence in support of his application. Instead, CalPERS presented competent medical evidence showing respondent was not substantially incapacitated from performing the usual and customary duties of a Maintenance Worker II. Based on Dr. Bassett's evaluation, there was no objective evidence that would render respondent substantially incapacitated for the performance of his duties as a Maintenance Worker II.

**ORDER**

The application for disability retirement filed by respondent Dayne R. Mueller is denied.

DATE: October 28, 2021

  
Adam Berg (Oct 28, 2021 08:18 PDT)

ADAM L. BERG

Administrative Law Judge

Office of Administrative Hearings