

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:

SAMANTHA V. JENNINGS, Respondent,

and

THE COUNTY OF PLACER, Respondent,

Agency Case No. 2022-0567

OAH No. 2022120250

PROPOSED DECISION

This matter was heard before Administrative Law Judge Ed Washington, Office of Administrative Hearings, State of California, via videoconference from Sacramento, California, on March 9, 2023.

Staff Attorney Noelle Lamprecht represented the California Public Employees' Retirement System (CalPERS).

Samantha V. Jennings (respondent) represented herself.

CalPERS properly served the County of Placer (County) with the Statement of Issues and Notice of Hearing. The County made no appearance. This matter proceeded

as a default against the County pursuant to Government Code section 11520, subdivision (a).

Evidence was received, the record closed, and the matter was submitted for decision on March 9, 2023.

ISSUE

Was respondent substantially incapacitated from performing her usual and customary duties as a Recorder/Elections Technician for the County due to an internal (COVID-19) condition when she filed her disability retirement application?

FACTUAL FINDINGS

Background

1. Respondent worked as a Recorder/Elections Technician for the County. By virtue of her employment with the County, respondent is a local miscellaneous member of CalPERS subject to Government Code section 21150.

Respondent's Application for Disability Retirement

2. On January 25, 2022, respondent signed and thereafter filed with CalPERS a Disability Retirement Election Application (application). On the application, respondent described her disability as: "COVID-19 long hauler – post-acute sequelae of COVID-19." She specified that her last day of paid earnings with the County was November 20, 2020, and requested a retirement date of December 31, 2021.

3. Respondent also specified on the application that her disability occurred on November 20, 2020, because she “acquired COVID.” Respondent described her limitations and preclusions due to this condition as: “Constant body aches, fatigue, cannot drive, rapid heart rate, tremors, dizziness, weakness, anxiety, brain fog, stress, tired all the time.” Respondent did not respond to the application question that asks how her condition affects her ability to perform her job. She provided the following information in the section on the application that allows an applicant to supply additional information: “Shortness of breath, high blood pressure, can barely walk up [the] stairs, joint pain, constant pain all over legs, fatigue.”

4. CalPERS obtained medical records and reports regarding respondent’s condition. This includes a report prepared by Scott T. Anderson, M.D., who performed an Independent Medical Evaluation (IME) of respondent concerning her condition and application for disability retirement. After reviewing the information, CalPERS determined respondent was not substantially incapacitated from the performance of her duties as a Recorder/Elections Technician for the County.

5. By letter dated April 27, 2022, CalPERS notified respondent that her application for disability retirement had been denied. Respondent timely appealed from the denial and this hearing followed.

Duties of a County Recorder/Elections Technician

6. The County produces a duty statement for the Recorder/Elections Technician position that identifies the distinguishing characteristics and essential job functions of respondent’s position. Those characteristics and functions include: “Knowledge of basic office methods and equipment including computer systems, basic principles and procedures of record keeping and filing, principles and practices of

customer service, proper telephone etiquette, [and] basic mathematic skills." The duty statement also provides that a Recorder/Elections Technician must have the following abilities:

- Continuously, sit at a desk for long periods of time, intermittently twist to reach equipment surrounding desk, perform simple grasping and fine manipulation, use telephone and write or use a keyboard to communicate through written means and lift light weight.
- Perform general clerical duties in assigned area of responsibility including maintenance of records and preparation of reports.
- Identify and interpret technical and numerical information.
- Examine, verify, and check records, documents and data.
- Respond to requests and inquiries from the general public.

[¶] ... [¶]

- Type or enter data at a speed necessary for successful job performance.
- Perform routine mathematical calculations.
- Operate office equipment
- Understand and follow oral and written instructions.
- Communicate clearly and concisely both orally and in writing.

[¶] ... [¶]

- Learn pertinent [laws codes and regulations] to review and examine documents to determine the appropriate actions, [learn] specialized computer programs utilized in the election process, [and learn] to retrieve, store, and remove information [in] filing systems.

7. When assigned to recording duties, a Recorder/Elections Technician must prepare letters and correspondence; ensure identification of applicants; research discrepancies in applications; read and understand manuals; and learn to operate microfilm cameras, printers, viewers, various scanners, and related equipment. An incumbent must learn legal requirements for processing, recording, and filing official documents; learn legal descriptions pertaining to vital statistics, property transfers, or descriptions of real property; and learn codes, rules, and regulations pertaining to transactions. A Recorder/Elections Technician must learn to accurately process and record voluminous documents; understand various types of recorded documents; and learn operational characteristics of microfilm cameras, printers, viewers, high speed flatbed and wide format scanners, CD burners, and associated computerized processes.

8. When assigned to elections duties, an incumbent must respond to questions from the public, operate optical and bar code scanners, sort and file election documents, monitor and order election materials and supplies, and operate elections equipment and materials. A Recorder/Elections Technician must learn the organization and operating details of the Office of Elections, governing statutes and ordinances, principles of the National Voter Registration Act, methods and techniques of training precinct and poll workers, and to understand, interpret, and apply provisions of the California Elections Code. An incumbent must also learn operating procedures of polls

and precinct desk, learn operating procedures of an elections warehouse, and have a basic understanding of the election procedures.

9. Respondent submitted a Physical Requirements of Position/Occupational Title form with her application, completed by a County human resources manager, which details the type, duration, and frequency of physical tasks a Recorder/Elections Technician must perform. The document specifies that an incumbent must constantly (more than five hours a day) interact and communicate with coworkers, lift up to 10 pounds, sit, engage in handling such as light grasping, engage in fine finger manipulation such as pinching and picking, and use a computer. An incumbent must frequently (from 2.5 to 5 hours a day) interact with the public in person or by phone and lift from 11 to 25 pounds. A Recorder/Elections Technician must also occasionally (31 minutes to 2.5 hours a day) stand, walk, kneel, bend, twist, reach below shoulders, and push and pull, and infrequently (five to 30 minutes a day) climb, squat, reach above shoulders, and drive. An incumbent is never (less than five minutes a day) required to lift more than 25 pounds, run, crawl, power grasp, walk on uneven ground, operate hazardous machinery, work at heights, or be exposed to excessive noise, extreme temperatures, dust, gas fumes, or chemicals.

Respondent's Testimony

10. Respondent is 43 years old and asserts she is no longer able to perform her job duties due to the long-term aftereffects or sequelae of her infection with the COVID-19 virus. This condition is commonly referred to as "Long COVID." She testified that she tested positive for COVID-19 twice, after taking an at-home test during the summer of 2020, and in late 2021 or early 2022.

11. Respondent has always enjoyed working. She began her first job when she was 15 and a half years old, which was as early as she was legally allowed to work. Being unable to work due to Long COVID has been difficult for her. She stated that she functions at about 25 percent of the level she functioned at prior to testing positive for COVID-19.

12. Prior to contracting Long COVID, respondent led a very healthy lifestyle and walked at least two miles every workday. She would also regularly run with her dogs and hike with her daughters. Currently, respondent experiences significant weakness and can barely walk up the stairs.

13. Respondent testified that her treating physician, Gary Guce, M.D., has diagnosed her with Long COVID and fibromyalgia, both autoimmune diseases. She is always in pain, has a high heart rate that does not correspond with her level of physical activity, and numbness in her hands. She has also been informed by Dr. Guce that her liver and kidneys are not functioning correctly. Respondent has experienced decreased levels of concentration or "brain fog" and does not feel comfortable driving. She is also anxious and depressed. Her eyesight is diminished and she has experienced hair loss. Respondent is frequently ill, has poor balance and coordination, and suffers from shortness of breath, heart palpitations, and chest pains. Her condition and symptoms have also caused her to experience irritable bowel syndrome and worsened her temporomandibular disorder.

14. Respondent testified that her brain fog prevents her from obtaining or retaining any of the knowledge or cognitive abilities specified in the duty statement for her position, and also prevents her from effectively following instructions or communicating verbally or in writing. Additionally, her overall body pain, weakness, hand numbness, and tremors, prevent her from sitting for extended periods, typing at

desired speeds, or frequently twisting, reaching, and grasping or using a computer keyboard or telephone.

15. Respondent disagreed with CalPERS' determination that her condition does not substantially incapacitate her from performing her usual and customary job duties. She feels CalPERS failed to adequately consider her condition and symptoms and opined that the medical experts CalPERS relied on in reaching its decision are not as familiar with Long COVID and its affects, as her treating physicians.

Expert Opinion

16. CalPERS called Scott Thomas Anderson, M.D., as its expert at hearing. Dr. Anderson is a clinical professor in the Division of Rheumatology, Allergy, and Clinical Immunology, Department of Medicine, at the University of California Davis School of Medicine. He is also certified as a diplomate in internal medicine by the American Board of Internal Medicine. He obtained his medical degree from the University of Texas Southwestern Medical School, Dallas, in 1986. He also obtained a Ph.D. in Medical Anthropology from the University of California at San Francisco-Berkeley, in 1998. Dr. Anderson works as a medical consultant and performs independent medical evaluations (IMEs) and qualified medical evaluations for a variety of entities.

17. On April 5, 2022, Dr. Anderson performed an IME on respondent to determine whether she was substantially incapacitated from performing her job duties, based on her reports of late sequelae of COVID-19. Dr. Anderson's evaluation included interviewing respondent and reviewing her medical history, occupational history, social history, and current symptoms. The evaluation also included a physical examination of respondent, a review of respondent's medical records, and a review of respondent's

job functions. Dr. Anderson detailed his evaluation, along with his findings and conclusions, in a 21-page IME report.

18. During the interview, respondent's chief complaint to Dr. Anderson was "COVID" and suffering from symptoms she attributed to being a "long hauler" due to COVID-19 infection. However, respondent's medical records included no positive test for COVID-19 and had numerous negative test results. According to the IME Report, respondent informed Dr. Anderson that she believes she contracted COVID-19, despite numerous negative test results, because she had never before experienced the symptoms she described to him. Respondent's history of symptoms included coughing, shortness of breath, reduced vision, and fatigue.

19. Respondent did not drive to the evaluation and does not use any assistive devices. She reported to Dr. Anderson that she could bathe, dress, and groom herself without assistance. Respondent could pay her bills online and order groceries online without assistance. She reported she could also perform housekeeping tasks but becomes fatigued as a result. Respondent's symptoms at the time of the IME included tension headache, migraine headache, blurred vision, failing vision, ringing ears, poor equilibrium, uncontrollable movements, low back pain, hip and buttock pain, joint pain and stiffness, oral and nasal ulcers, chest pain, difficulty breathing, poor concentration, drowsiness, depression, feeling hopeless, skin rash, easy bruising, nausea, heartburn, recurrent fears, panic attacks, and feeling stressed.

20. Respondent reported to Dr. Anderson that it is impossible for her to perform her job duties because it requires focusing or walking in an office environment. She asserted she could do "nothing that requires walking," and that she constantly feels tired and weak. Respondent stated she could perform limited bending, stooping, and sitting, and could complete two to three minutes of walking during a

15-minute timeframe. She had been evaluated with x-rays and blood tests and was treating her symptoms largely through nutritional remedies.

21. Upon review of respondent's job description, Dr. Anderson noted that her job is clerical in nature and requires her to work in an office environment using computers and telephones and interact with the public via a public access counter. Walking back and forth between computers and the public counter is common. She must sit at a desk, respond to questions, interpret technical and numerical information, and record data.

22. Dr. Anderson found no diagnostic test results or other medical findings in respondent's medical records that provided a basis for her symptoms. The records revealed that respondent took at least three COVID-19 test in October 2022 and the test results were all negative. Numerous notes in the medical records identified "coronavirus" or "COVID-19 disease" as a diagnoses, but there was no information to support how the diagnoses was confirmed.

23. The results of Dr. Anderson's physical examination of respondent were largely normal. Her lungs were clear to auscultation and percussion. There were no intercostal retractions to indicate reduced lung air pressure. There was no evidence of rapid breathing, wheezing, or unusual lung sounds. An examination of respondent's extremities revealed no synovial inflammation of her intrinsic joints or wrists, and she had full range of motion in those areas. There was no knee swelling and her feet were not tender. There was no triggering noted at the fibromyalgia trigger points. There was slight tenderness detected on the inside of respondent's knees, but no ligamentous instability was noted. The circumferential measurements of respondent's extremities were identical, and her hand strength was normal. Respondent's muscle

strength was normal both proximally and distally, she could sit and stand from a chair without using her arms for assistance and could stand on her toes without difficulty.

24. After completing the evaluation, Dr. Anderson reached the following diagnostic impressions: (1) Normal physical examination, (2) History of tobacco dependence, and (3) History of asthma, probably caused by combination of tobacco dependence and allergies, possibly also exacerbated by exercise.

25. Dr. Anderson determined that respondent did not have an actual or present impairment of late sequelae of COVID-19 that arises to the level of substantial incapacity. He noted that she had no indication of late sequelae COVID-19 infection or other Coronavirus infection. Dr. Anderson also noted that he was not convinced respondent ever suffered a Coronavirus infection, based on his review of her records, as there was no convincing evidence of any acute COVID-19 infection and numerous negative laboratory tests for COVID-19. He found very little medical support for her claimed condition and limitations. To the extent respondent suffers from occasional cough or shortness of breath, Dr. Anderson concluded those symptoms were likely attributable to pre-existing asthma and cigarette smoking. However, those conditions and symptoms do not prevent respondent from working, as she works in a clerical capacity in a temperature-controlled, air-conditioned environment.

Analysis

26. Respondent sought disability retirement based on claimed post-acute sequelae of COVID-19. The burden was on respondent to offer evidence at hearing to support her disability retirement application. Respondent did not meet her burden. She called no medical expert to provide competent medical evidence to support her

claimed limitations and incapacity. Additionally, she produced no documentation from a medical professional as independent support for her claims.

27. Respondent testified to significant debilitating symptoms and physical limitations at hearing. However, her testimony was primarily a recitation of subjective pain symptoms and cognitive changes she contends she has experienced since November 2020. She produced no evidence beyond her unsupported testimony that she has ever had COVID-19 or any form of the Coronavirus. Even had she contracted Coronavirus in or around November 2020, there was no competent medical evidence to support that it resulted in her claimed symptomology.

28. Conversely, Dr. Anderson testified in detail about his evaluation and review of respondent's medical history and records. He emphasized that respondent's physical examination was largely normal and that the results of all Coronavirus tests in respondent's medical records were negative. He found no objective findings as a result of his evaluation or within respondent's medical records to support her claimed incapacity. His opinion that respondent was not substantially incapacitated from performing her usual job duties was persuasive. His IME report was detailed and thorough, and his testimony at hearing was clear, comprehensive, and well-supported by the evidence.

29. When all the evidence is considered, respondent did not offer sufficient evidence to establish that, when she applied for disability retirement, she was substantially and permanently incapacitated from performing the usual duties of a Records/Elections Technician for the County. Accordingly, her application for disability retirement must be denied.

LEGAL CONCLUSIONS

1. By virtue of her employment, respondent is a state miscellaneous member of CalPERS, who is subject to disability retirement under Government Code section 21150. Government Code section 21150, in relevant part, provides:

(a) A member incapacitated for the performance of duty shall be retired for disability pursuant to this chapter if he or she is credited with five years of state service, regardless of age, unless the person has elected to become subject to Section 21076 or 21077.

2. To qualify for disability retirement, respondent has the burden of proving that she is "incapacitated physically or mentally for the performance of ... her duties." (Gov. Code, § 21156.) Government Code section 20026, defines "Disability" and "incapacity for performance of duty" as a basis of retirement, to mean "disability of permanent or extended and uncertain duration, as determined by the board, ... on the basis of competent medical opinion." (Underlining added.)

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 [or her] usual duties." In *Smith v. County of Napa* (2004) 120 Cal.App.4th 194, 207, the court found that discomfort, which may make it difficult for an employee to perform his [or her] duties, is not sufficient in itself to establish permanent incapacity. (See also, *In re Keck* (2000) CalPERS Precedential Bd. Dec. No. 00-05, pp. 12–14.)

4. When all the evidence in this matter is considered, given the analyses in *Mansperger, Smith, and Keck*, respondent did not establish that her disability retirement application should be granted. She failed to submit sufficient evidence based upon competent medical opinion that, when she applied for disability retirement, she was permanently and substantially incapacitated from performing the usual duties of a Recorder/Elections Technician for the County. Consequently, her disability retirement application must be denied.

ORDER

The application of respondent Samantha V. Jennings for disability retirement is DENIED.

DATE: April 10, 2023

Ed Washington

ED WASHINGTON

Administrative Law Judge

Office of Administrative Hearings