

**ATTACHMENT A**  
**THE PROPOSED DECISION**

BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Application for Disability  
Retirement of:

KATHY T. LEDESMA,

Applicant/Respondent

and

CALIFORNIA FRANCHISE TAX BOARD,

Respondent.

Case No. 2011-0737

OAH No. 2011110903

**PROPOSED DECISION**

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings (OAH), State of California, heard this matter on September 18, 2013, in Sacramento, California.

Christopher C. Phillips, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Applicant Kathy T. Ledesma represented herself.

No one appeared for or on behalf of respondent California Franchise Tax Board.

Evidence was received, the record was closed, and the matter was submitted for decision on September 18, 2013.

**SUMMARY**

Applicant applied for disability retirement benefits on the basis of a separated pelvis. The competent medical evidence established that she is not substantially incapacitated for the performance of her usual job duties as an Associate Information Systems Analyst with the California Franchise Tax Board due to a separated pelvis. Therefore, applicant's application for disability retirement benefits should be denied.

PUBLIC EMPLOYEES RETIREMENT SYSTEM  
FILED *October 22, 2013*  
*Kathie E. Schrey*

## FACTUAL FINDINGS

### *Procedural History*

1. On April 17, 2009, applicant signed a Disability Retirement Election Application (application) that was received by CalPERS on April 23, 2009. In her application, applicant identified her specific disability as: "SEPARATION OF THE PUBIC BONE INJURY RE-OCCURRED [*sic*] DURING PREGNANCY NOVEMBER 07 SEVERE PAIN IN PELVIC AREA."
2. At the time applicant filed her application for disability retirement, she was employed by respondent California Franchise Tax Board as an Associate Information Systems Analyst. By virtue of her employment, applicant is a state miscellaneous member of CalPERS subject to Government Code section 21150.<sup>1</sup>
3. CalPERS obtained or received medical reports concerning applicant's claimed disability from competent medical professionals. After review of those documents, CalPERS determined that applicant was not permanently disabled or incapacitated for the performance of her duties as an Associate Information Systems Analyst with the California Franchise Tax Board at the time she filed her application.
4. Applicant was notified of CalPERS' determination and advised of her appeal rights by letter dated May 13, 2011.
5. Applicant filed a timely appeal from the denial of disability retirement by letter dated June 10, 2011, and requested a hearing.

---

<sup>1</sup> Government Code section 21150 states:

(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.

(b) A member subject to Section 21076 or 21077 who becomes incapacitated for the performance of duty shall be retired for disability pursuant to this chapter if he or she is credited with 10 years of state service, regardless of age, except that a member may retire for disability if he or she had five years of state service prior to January 1, 1985.

(c) For purposes of this section, "state service" includes service to the state for which the member, pursuant to Section 20281.5, did not receive credit.

6. Mary Lynn Fisher, Chief of the Benefit Services Division of CalPERS, filed the Statement of Issues in her official capacity on November 14, 2011.

7. On December 16, 2011, CalPERS served a Notice of Hearing on applicant and California Franchise Tax Board.

8. On October 9, 2012, Meghan McEvilly, Tax Counsel III, acknowledged receipt of the Statement of Issues and Notice of Hearing on behalf of respondent California Franchise Tax Board. She also advised OAH that California Franchise Tax Board had no intention of appearing at the upcoming hearing in this matter. The evidentiary hearing was conducted as a default proceeding, as to respondent California Franchise Tax Board only, pursuant to Government Code section 11520.

#### *Job Duties*

9. The essential functions of an Associate Information Systems Analyst are as follows: 1) analyzing and obtaining a working knowledge of proposed changes to electronic information processing systems (30%); 2) working independently to identify and develop detailed test plans, test conditions, test data, and test documents for approved system changes to electronic information processing systems using documentation such as requirements, system change request, specifications, etc. (25%); 3) determining and preparing test data (20%); 4) executing, validating, and documenting the test results of online and batch programs (15%); and 5) investigating and analyzing identified production system incidents (10%).

The physical requirements of the job are as follows:

**Never:** running; crawling; kneeling; climbing; squatting; pushing and pulling; power grasping; driving; working with heavy equipment; exposure to extreme temperature; humidity, or wetness; exposure to dust, gas, fumes, or chemicals; operation of foot controls or repetitive movement; working at heights; use of special visual or auditory protective equipment; and working with bio-hazards.

**Occasionally (up to three hours):** standing, walking, reaching above shoulder, reaching below shoulder, simple grasping, lifting/carrying 0-10 pounds, walking on uneven ground, and exposure to excessive noise.

**Frequently (three to six hours):** fine manipulation.

**Constantly (over six hours):** sitting, bending neck, bending waist, twisting neck, twisting waist, repetitive use of hand(s), keyboard use, and mouse use.

### *Respondent Ledesma's Injury and Subsequent Work History*

10. Applicant first began experiencing pain in her pelvic region while delivering her third child in 1999. She said she heard a "snap" in her pelvic region while pushing during delivery. When she was discharged from the hospital, she was wheelchair-bound because she was unable to walk. Approximately 10 days later, she was diagnosed with a separated pelvis.

11. Applicant was off work due to her injury for approximately 10 months. She returned to work on a gradual basis over the course of a year, initially working four hours a day and then graduating to six and then eight hours a day.

12. Applicant's last day on payroll as an Associate Information Systems Analyst was November 1, 2006, and she has not worked for compensation since then. While she initially received state disability benefits based on her separated pelvis, she has since exhausted those benefits.

13. Applicant continued to experience pain in her pelvic region during the subsequent deliveries of her children in 2007, 2008, and 2010. She said she now lives in constant pain and has been receiving steroid injections for pain in her back caused by the instability of her pelvic region for the past two years. The instability of applicant's pelvic region also causes her to suffer from a weak bladder and problems with her bowels.

14. Applicant has lived in Texas since 2007, and her husband drove her to California for the two medical evaluations with Dr. Dhaliwal discussed below and the hearing in this matter. Throughout the hearing, respondent Ledesma was in obvious discomfort, at one point asking to stand while a witness was testifying. She was able to sit for the entire duration of her own testimony, which lasted approximately one hour, but constantly adjusted her sitting position.

15. The income applicant's husband earns from working supports the two of them, their three young children (now ages 3, 5, and 6), and her 14-year-old child from a previous marriage. Her two oldest children are adults and do not live at home. Applicant explained that her continuous pain has a substantial impact on her ability to care for her children because she cannot drive when she takes her pain medication. If she needs to go shopping, she said she needs to plan ahead to make sure the pain medication is no longer in her system when she drives to the store.

### *Medical Evaluations*

#### *Dr. Dhaliwal*

16. CalPERS retained board-certified internist Nariender Singh Dhaliwal, M.D., to perform an independent medical evaluation (IME) of applicant.

17. Dr. Dhaliwal performed a physical examination on February 15, 2010, which he found unremarkable except for applicant being four months pregnant, having a slight curvature in the lower spine which he found to be common in pregnancy, and mild tenderness to the touch in her symphysis pubis.<sup>2</sup>

18. Dr. Dhaliwal also reviewed a job description for applicant's position as an Associate Information Systems Analyst and a list of the physical requirements for that position. The information provided in those documents was the same as that which is discussed in Factual Finding 9.

19. Dr. Dhaliwal reviewed applicant's medical records. Those records included an x-ray of the pelvis taken 10 days after the birth of her third child in 1999, which showed a mildly separated appearance of the symphysis pubis related to childbirth. Also included were physician's notes from October and December 1999 recommending that applicant use a pelvic support belt and take anti-inflammatory medication.

As of January 6, 2000, applicant's separated pubic bone appeared to have resolved, as an x-ray of that date showed her pelvis to be in "good position." A follow-up x-ray on May 8, 2000, was "unremarkable."

20. After his physical examination and review of pertinent records, Dr. Dhaliwal wrote a report in which he stated:

To begin with, Ms. Ledesma is currently four months pregnant, so this is not a good time for a permanent disability evaluation. With her current pregnancy, she is complaining of pain in the area of the pubis. I think it would be unfair to determine whether she is permanently substantially incapacitated at this time, due to her ongoing pregnancy. My opinion at this time would be that the claimant should wait 12 to 16 weeks after her delivery, and then get a more recent x-ray diagnosis of her pubic bone to see if any abnormality of the pubic bone persists. If the pubic bone abnormality persists, she should be re-evaluated [*sic*] and determined whether she has a permanent disability.

Pubic separation during pregnancy rarely occurs, and when it does, this bone usually returns back to normal. Some patients, however, are left with chronic separation, but nothing usually needs to be done unless the separation is more than 4 cm. Once again, I would wait until 16 weeks after the delivery, as she has a history of separation, and it may take a little more time for the symphysis pubis to settle.

---

<sup>2</sup> The "symphysis pubis" is the midline cartilaginous joint that unites the left and right pubic bones.

21. Dr. Dhaliwal concluded that applicant was substantially incapacitated on a temporary basis because she was currently pregnant and pregnancy "is a cause of pubic separation and pain in some individuals, especially in this person at this time."

22. Dr. Dhaliwal was subsequently provided additional medical records for applicant, and on June 2, 2010, he wrote a supplemental report in which he stated:

The claimant has been seen by her primary care physician for pelvic pain from 2006 onward to 2010 many times, per review of the records. At the time of my exam, I was looking for objective evidence of any pelvic pubic [sic] bone abnormalities, such as if any x-rays were done, which I did not find in these records. There was absence of any objective evidence, but only subjective pain on examination. The physician never substantiated any musculoskeletal system examination other than the checkmarks. Pain milieu was not specifically addressed on the exam.

My opinion is at this time, once again, that as long as she is pregnant (she was 16 weeks at the time of examination on 4/14/2010 by her primary care physician), the final disability determination cannot be made. I would rather wait for this patient to deliver her baby and then reevaluate her with objective testing available, particularly an x-ray of the pelvis obtained 3 to 4 weeks after delivery, to see if there is degeneration of the pubic symphysis joint.

[¶]... [¶]

She remains temporarily disabled until at least 12 weeks after her delivery, and opinions in my IME report are unchanged by the additional records.

23. Applicant returned to Dr. Dhaliwal for re-examination on January 18, 2011. At that time, she reported that she continued to experience pain in her pelvic region when standing and sitting. She was taking Hydrocodone (500 mg) and Lofexidine for pain.

24. Applicant brought with her a report of a new MRI of the pelvis that was performed on July 15, 2010. The report indicated that there were irregularity and signal changes at the pubic center above the pubic symphysis, which suggested osteitis pubis (inflammation of the pubic bone). Dr. Dhaliwal contacted the author of that report and confirmed that there was no separation of the pubic symphysis, but rather the joint showed normal arthritic changes which are commonly seen in people of applicant's age.

25. Dr. Dhaliwal also conducted a physical examination of applicant, which was unremarkable other than “considerable tenderness (in the pubic symphysis) with just a gentle touch and pressure, and the pain perception seems proportionately more than the pelvic MRI scan findings would suggest.”

26. Dr. Dhaliwal concluded in his written report that applicant was not substantially incapacitated for the performance of her usual duties as an Associate Information Systems Analyst due to a separated pubic bone.

27. At hearing, Dr. Dhaliwal testified consistently with his written findings. He also explained that he did not doubt applicant’s reports of pain, but did not find any objective evidence during either his records review or physical examination to connect such pain with a separated pubic bone. While Dr. Dhaliwal acknowledged the fact that the July 2010 MRI showed normal arthritic changes to the pubic symphysis, he opined that such changes would not cause an amount of pain that would render applicant substantially incapacitated.

#### *Applicant’s Medical Evidence*

28. Applicant did not offer any medical testimony at hearing. Instead, she introduced different reports from various physicians.

29. Manoj K. Patel, M.D., an internist, wrote a “Primary Treating Physician’s Narrative Report” on April 14, 2010. The cover page to that report included the following note:

This letter is in regards to my patient, Kathy Ledesma. Mrs. Ledesma suffers from Symphysis Pubic Dysfunction and Pelvic Diastasis. She has been suffering from Symphysis Pubic Dysfunction and Pelvic Diastasis continuously and uninterrupted since 11/01/2006 and has never recovered from this disabling condition. Symphysis Pubic Dysfunction and Pelvic Diastasis substantially incapacitates Mrs. Ledesma from performing her usual job duties such as sitting or standing for a period of more than 30 minutes at a time. I have been treating Mrs. Ledesma for this condition since the disabling condition began and patient is required to follow up in the clinic monthly.

30. In the report, Dr. Patel described applicant’s injury as follows:

Symphysis Pubic Dysfunction and Pelvic Diastasis is the widening [*sic*] gap between the pelvic bones and the synthesis [*sic*] pubis. Excessive strain during childbirth has caused severe damage to Mrs. Ledesma in this region. The pelvic symphysis was abnormally separated causing Mrs. Ledesma to experience severe burning and stabbing pain to her lower back, hip, groin,

abdominal area, under thigh, down left side back, and down her left leg.

31. Dr. Patel opined that there was no way to reverse the permanent damage to applicant's pelvic/pubic region and that she can no longer perform any activities involving the use of her legs without pain.

32. Applicant was evaluated by Kelly M. Scott, M.D., a pain and rehabilitation medicine specialist, in May 2012. Dr. Scott performed a physical exam and documented her findings in a subsequent report. She noted that applicant had tenderness to light palpation in the suprapubic area of the abdomen. An external examination of her pelvic floor revealed that the pubic symphysis was tender to palpation on both sides and the tenderness lasted more than five seconds after cessation of pressure. An internal examination of her vaginal pelvic floor revealed tenderness to palpation diffusely, worse on the right where the muscles were very spasmed.

33. Dr. Scott's assessment of applicant was that she was suffering from pubic symphyseal pain, pelvic floor myofascial dysfunction, pelvic floor myofascial pain, pelvic obliquity, sacroiliac joint pain and dysfunction, urinary incontinence, moderate cystocele, chronic constipation, dyspareunia, abdominal wall myofascial pain, greater trochanteric bursitis, myofascial back pain and possible lumbar spondylosis and facet atrophy, and mild depression. Dr. Scott opined that respondent Ledesma would benefit greatly from pelvic floor physical therapy and prescribed medication to help with such therapy. Dr. Scott offered no opinion as to whether applicant was substantially incapacitated for the performance of her usual duties as an Associate Information Systems Analyst.

34. Applicant also consulted with Felix Segovia, M.D., an orthopedist, on June 13, 2012. It was unclear from Dr. Segovia's report whether he performed a physical examination or limited his consultation to a records review. He wrote in his report:

I concur with that [sic] diagnosis after reviewing her medical records and comments from Dr. Manoj K. Patel, M.D. [sic] from Lewisville, Texas and Dr. Kelly Scott [sic] M.D. [sic] a specialist in Pelvic disorder from Southwestern University in Dallas, Texas. The patient also has been seen at the Touch Stone Imaging of Lewisville, an MRI unit. An MRI was done. This was ordered by Dr. Patel. I also concur with Dr. Manoj K. Patel, M.D.'s narrative dated 4/14/2010 which indicates that Kathy Ledesma has been suffering from Symphysis Pubic Dysfunction and Pelvic Diastasis [sic] substantially incapacitates Mrs. Ledesma from performing her usual job duties such as unable to sit or stand for a more than 30 minutes at a time. These conditions are unquestionably not normal for a woman of her age and this disability is considered permanent.

35. Lastly, applicant introduced a letter written by Pablo P. Zeballos, D.O., in which Dr. Zeballos confirmed that applicant has been a patient of his since August 2011. Dr. Zeballos also confirmed that applicant has been diagnosed with “traumatic (chronic) diastasis of symphysis pubis,” and remains unable to sit or stand for more than 30 minutes at the time. He opined that there is no permanent treatment for her condition, and that she will endure pain from it for the remainder of her life. Dr. Zeballos did not describe his medical credentials in his letter.

### *Discussion*

36. Dr. Dhaliwal’s opinion that applicant is not substantially incapacitated for the performance of her usual duties as an Associate Information Systems Analyst is the more persuasive evidence. As he explained at hearing, he found no objective evidence that connected applicant’s complaints of pain with a separated pubic bone. While the July 2010 MRI report showed some inflammation of the pelvic joint, the doctor who authored that report explained to Dr. Dhaliwal that such inflammation was caused by normal arthritic changes in the joint. Dr. Dhaliway opined that such inflammation would not cause pain to the degree that would render applicant substantially incapacitated.

On the other hand, Dr. Patel based his conclusion that applicant was substantially incapacitated solely on his physical examination and her subjective complaints of pain. He did not have any imaging studies or x-rays that provided objective evidence of pelvic separation and which contradicted the July 2010 MRI.

Dr. Scott’s assessment of applicant was not persuasive either. While Dr. Scott found applicant to have significant pain during a physical exam, there were no imaging studies or x-rays ordered to determine the cause of the pain. Furthermore, Dr. Scott offered no opinion about whether applicant was substantially incapacitated for the performance of her usual job duties as a result of the pain she was suffering from.

Dr. Segovia’s and Dr. Zeballos’ opinions relied heavily on Dr. Patel’s conclusions, and therefore are not persuasive for the same reasons that Dr. Patel’s opinion was not persuasive. Furthermore, it was unclear whether Dr. Segovia’s opinions were based on his physical examination of applicant or just a review of her medical records. There is no evidence of Dr. Zeballos’ medical credentials.

37. Additionally, applicant’s ability to travel by car from California to Texas on at least three occasions and testify from a sitting position for nearly an hour demonstrates her ability to sit for substantially longer than 30 minute intervals. Furthermore, she did not testify to having any help with caring for her three young children while her husband is at work, so a reasonable inference is that she cares for them by herself. The ability to be the primary caregiver for three young children for the majority of the day is inconsistent with a person who suffers from pain that is so severe as to be substantially incapacitating.

## LEGAL CONCLUSIONS

### *Applicable Statutes*

1. Government Code section 20026 provides, in pertinent part:

“Disability” and “incapacity for performance of duty” as the 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. Government Code section 21150, subdivision (a), provides:

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 20176 or 21077.

3. Government Code section 21156, subdivision (a)(1), provides, in pertinent part:

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.

### *Burden of Proof and Legal Standards for Determining Disability*

4. Applicant has the burden of proof to establish by a preponderance of evidence that she is “incapacitated for the performance of duty,” which courts have interpreted to mean “the substantial inability of the applicant to perform [her] usual duties.” (*Mansperger v. Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 877.) Discomfort, which may make it difficult to perform one’s duties, is insufficient to establish permanent incapacity for the performance of her position. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207; citing, *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 862.) Furthermore, an increased risk of further injury is insufficient to constitute a present disability, and prophylactic restrictions on work duties cannot form the basis of a disability determined. (*Hosford v. Board of Administration, supra*, 77 Cal.App.3d. at p. 863.)

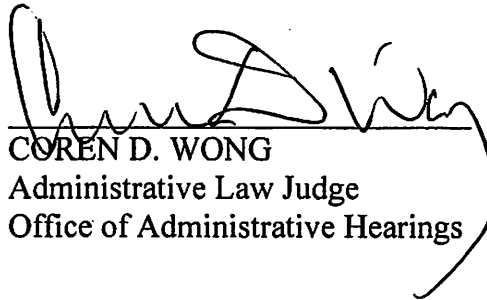
*Conclusion*

5. As set forth in Factual Finding 36, the evidence established that applicant is not permanently disabled or incapacitated for the performance of her usual duties as an Associate Information Systems Analyst with the California Franchise Tax Board on the basis of a separated pubic bone. Applicant did not sustain her burden of providing competent medical evidence to establish that she is permanently incapacitated for the performance of her usual duties.

ORDER

The application of Kathy T. Ledesma for disability retirement benefits is DENIED.

DATED: October 17, 2013



COREN D. WONG  
Administrative Law Judge  
Office of Administrative Hearings