

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:

KEITH HOLMES,

Respondent,

and

COUNTY OF BUTTE,

Respondent.

Case No. 2013-0841

OAH No. 2013110027

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on August 12, 2014, in Sacramento, California.

Rory J. Coffey, Senior Staff Counsel, represented the California Public Employees' Retirement System (CalPERS).

There was no appearance by or on behalf of Keith Holmes (respondent) or the County of Butte (County).

Evidence was received, the record was closed, and the matter was submitted for decision on August 12, 2014.

ISSUE

On the basis of chronic obstructive pulmonary disease (COPD) and post-traumatic stress disorder (PTSD), is respondent permanently and substantially incapacitated for the performance of his usual duties as an Office Specialist, Senior for the County?

FACTUAL FINDINGS

1. CalPERS established that respondent was properly served with notice in this matter. The hearing proceeded as a default hearing under Government Code section 11520.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED

Aug. 21 2014

[Signature]

Respondent's Disability Retirement Application

2. Respondent was born in 1956. He filed a disability retirement application on July 26, 2012. In his application, respondent described his disability as "advanced COPD, PTSD." In response to the question asking when his disability occurred, respondent wrote, "?." In response to the question asking how his disability occurred, respondent wrote "military." Respondent described his limitations and preclusions as "unable to perform duties full time." In response to the question asking how his illnesses have affected his ability to do his job, respondent stated, "Health diminishing, anxiety occurs."

3. By letter dated July 15, 2013, CalPERS notified respondent that his disability retirement application was denied. The letter advised respondent of his right to appeal from CalPERS's denial.

4. By letter dated July 18, 2013, respondent appealed from CalPERS's denial of his disability retirement application.

Duties of an Office Specialist, Senior

5. As set forth in the County's class specification bulletin, an Office Specialist, Senior, under "general supervision, performs technical and clerical work involving review and analysis of information contained in files and records, prioritizes and assigns work to office staff, updates computer database, and assures the accuracy of the filing systems, explains complex codes, regulations, policies, and procedures to customers." The work of an Office Specialist, Senior, "is performed in an office environment."

Report of CalPERS's Expert

6. Sydney C. Choslovsky, M.D. is board-certified in Internal Medicine, Pulmonary Disease. On April 12, 2013, Dr. Choslovsky evaluated respondent. Dr. Choslovsky reviewed respondent's medical records, and issued a report dated April 28, 2013.

7. As set forth in Dr. Choslovsky's April 28, 2013 report, during the evaluation, respondent told Dr. Choslovsky that "he suffers from breathlessness and stress which makes it impossible for him to do his job." Respondent had a diagnosis of "smoking-related COPD." Respondent complained of "coughing and constant breathlessness both at work and at home." He "feels extremely short of breath when talking or when he is busy with continuous sedentary activities or hurrying or anything physical." He "has a daily cough with white mucus often becoming green." He denied having "fever, chills, and has not coughed up any blood." He "gets transient chest pains at rest or with activity and occasional palpitations."

8. Respondent also complained of "persistent anxiety." He "has had high blood pressure and frequent gastrointestinal problems, particularly recently with change in bowel

habits, frequent loose bowel movements, and nausea, but no abdominal pain." He complained of "difficulty voiding and has had urinary bleeding." Respondent told Dr. Choslovsky that he had "smoked a packet of cigarettes daily for 40 years," but in the past six months, he had "reduced to one-half packet of cigarettes daily."

9. After evaluating respondent and reviewing his medical records, Dr. Choslovsky diagnosed respondent as follows:

This 57-year-old man has severe chronic obstructive pulmonary disease related to smoking. He has had approximately two exacerbations related to infection each year requiring him to receive antibiotics and remain off work.

He mostly has been unable to work related to stress and anxiety and what has been described as PTSD. He has been under the care of a psychiatrist at the VA Hospital.

10. Even though Dr. Choslovsky recognized that respondent was diagnosed with severe COPD and PTSD, Dr. Choslovsky opined that, "From his job as office specialist senior for Butte County there are no specific job duties that he is unable to perform because of [a] physical or mental condition." Dr. Choslovsky opined further that respondent was "not substantially incapacitated for performance of his usual duties." Dr. Choslovsky stated that, although respondent "has a severe degree of chronic obstructive pulmonary disease, he could continue with sedentary employment and clerical activities." According to Dr. Choslovsky, respondent is "on satisfactory therapy for his COPD, which will become progressively worse if he continues smoking."

Discussion

11. The burden was on respondent to present competent medical evidence to establish that he is permanently and substantially incapacitated for the performance of his usual job duties. Respondent did not appear at hearing and did not submit evidence to meet his burden. Consequently, his disability retirement application must be denied.

LEGAL CONCLUSIONS

1. By virtue of his employment as an Office Specialist, Senior, for the County, respondent is a local miscellaneous member of CalPERS and subject to Government Code section 21150. Respondent has the minimum service credit necessary to qualify for retirement.

//

2. Government Code section 20026, in relevant part, provides:

“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. 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.)

4. To qualify for disability retirement, respondent had to offer sufficient evidence, based upon competent medical opinion, to establish that, at the time he applied, he was permanently and substantially incapacitated for the performance of his usual duties as an Office Specialist, Senior, for the County. Respondent failed to offer such evidence. Consequently, his disability retirement application must be denied.

ORDER

The application of Keith Holmes for disability retirement is DENIED.

DATED: August 19, 2014


KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings