

**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:

ELISA MANZO,

Respondent,

and

OAKLAND UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. 2014-0087

OAH No. 2014051294

**PROPOSED DECISION**

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on October 29, 2014, and May 21 and June 30, 2015, in Oakland, California.

Senior Staff Counsel Jeanlaurie Ainsworth represented complainant California Public Employees' Retirement System.

Respondent Elisa Manzo was present for hearing each day. She was not represented by an attorney. On October 29, 2014, and May 21, 2015, respondent was assisted by her daughter-in-law, Ronnda Manzo.

There was no appearance by respondent Oakland Unified School District.

The record closed and the matter was submitted on June 30, 2015.

**FACTUAL FINDINGS**

1. Respondent Elisa Manzo (respondent) was employed by respondent Oakland Unified School District (district) as an administrative assistant. By virtue of her employment, respondent was a member of the California Public Employees' Retirement System (CalPERS).

PUBLIC EMPLOYEES RETIREMENT SYSTEM

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2. On August 10, 2012, respondent signed and submitted to CalPERS an application for "Service Pending Disability Retirement." She retired for service on August 26, 2012, pending a later decision on her disability retirement application. Respondent wrote that her disability retirement application is based on liver transplant, headaches due to stress, diabetes, bilateral carpal tunnel syndrome, depression, high blood pressure and swollen feet. In her application, respondent also mentions uncontrolled high cholesterol, pain from hernia repairs, and arthritis in both hands. CalPERS denied respondent's disability retirement application on June 25, 2013. Respondent appealed, and this hearing followed.

3. Respondent is 61 years old.

4. Respondent did not give a clear chronological account of her employment history, at hearing or to the several medical evaluators who took a history from her. It appears, however, that respondent started work with the district in 1991 as a teacher's helper, that she then worked as a clerk typist, and that her last position, which she held for the last several years of her career, was that of administrative assistant. In her last assignment, she worked for the district ombudsman, Gabriel Valenzuela. Respondent answered the phone; received and processed complaints; and interacted with the public and with other district staff members. From a physical point of view, applicant's job duties involved general office work: she used a computer and a mouse for up to six hours a day; had to sit and stand for extended periods of time; and occasionally had to kneel, lift, bend and reach overhead. She was not required to lift more than 25 pounds, and only occasionally had to lift or carry anything less than 25 pounds.

5. Respondent has a history of hypertension, diabetes, and liver disease. She had a liver transplant in 2004. She has had multiple hernia-repair surgeries that required abdominal incisions.

6. Respondent describes ever-increasing stress during the last several years of her employment involving her supervisor, Valenzuela. According to respondent, when she took a complaint from parents or members of the public, which apparently was quite often, she created a file with all of the appropriate information and gave it to Valenzuela. Respondent states that Valenzuela would keep the complaint files in his office and not do anything with them. She states that Valenzuela would often misplace or lose files in his office, which was disorganized, or in the trunk of his car. Because of this, respondent stated, complaints were not addressed promptly or were never resolved. This, according to respondent, was a source of great stress to her. She took videos showing the state of Valenzuela's office and showed them to the president of the school board, but nothing was ever done. Respondent feels strongly that the district took advantage of her and mistreated her; even today, three years after she left work, it makes respondent angry to think about it. It is not clear how respondent feels that the district mistreated her. It appears that respondent took seriously the complaints that she received, that she had to take the angry phone calls from parents whose complaints were not acted on, and that she feels the district did not support her in her complaints against her supervisor.



7. On June 8, 2012, respondent went to see Safa Taha Magid, M.D., her primary care physician, who took her off work. Respondent's last day on the district's payroll was July 31, 2012.

8. The only medical evidence in support of respondent's application consists of hearsay reports and records from persons who did not testify at hearing.

Dr. Magid signed a CalPERS "Physician's Report on Disability" on June 8, 2012. She wrote that respondent had suffered a work injury due to "Multiple stressor[s] at place of employment." Dr. Magid's examination findings were "stress, diabetes mellitus type 2, status post liver transplant, bilateral hand pain." She diagnosed applicant as suffering from "major depression" and "carpal tunnel." Dr. Magid wrote that applicant is substantially incapacitated from the performance of her duties. The CalPERS form asks the physician to describe the specific work activities that the applicant is unable to perform. Dr. Magid wrote, "Payroll duties, reviewing of documents for accuracy, supervision of office." On September 19, 2014, Dr. Magid signed another report that states, in its entirety, "Due to [respondent's] multiple and chronic and long term medical problems she is not able to work."

In a letter to respondent dated October 1, 2014, Jose Carlos Troncoso, M.D., a physician in the Rheumatology Department at Oakland Kaiser, informs her: "You appear to have Erosive arthritis. Discuss the possible use of Tramadol for pain with Dr. Magid, and try the Aspercream up to 4 times daily as needed for the pain." This visit concerned respondent's complaints of hand pain.

Respondent submitted a print-out, apparently from the Kaiser Permanente database, which describes her "ongoing health conditions" as follows:

- History of liver transplant
- Hepatitis C, Chronic
- History of transplant
- GERD (Gastro-Esophageal Reflux Disease) (Heartburn)
- Diabetes Type 2, uncomplicated
- Diabetes Type 2
- [Diabetes Mellitus] without retinopathy
- Hypertension
- Hyperlipidemia (high blood fats)
- History of hysterectomy, total
- Ventral hernia
- Bilateral Carpal Tunnel Syndrome
- Pyelonephritis (Kidney infection)
- Atherosclerosis of aorta

Respondent also submitted several documents from Kaiser Permanente showing that she had medical appointments on various dates.

9. Complainant timely objected to the documents described in Finding 8 as hearsay. Under the Administrative Procedure Act, the documents cannot independently support a factual finding that respondent is incapacitated for the performance of duty. (Gov. Code, § 11513, subd. (d).)

Even if they had been admitted as direct evidence, however, the documents would not support a finding on that issue. Respondent's appointment records, the description of her ongoing health conditions, and Dr. Troncoso's letter, do not address the issue of whether she was incapacitated for the performance of her usual duties when she retired. While Dr. Magid believes that respondent cannot work, neither her 2012 report nor her 2014 letter states her findings upon examination or the rationale for her conclusion. In addition, even if respondent could not perform "payroll duties, reviewing of documents for accuracy, supervision of office," as Dr. Magid states, the evidence does not establish that those duties constitute the substantial range of her duties as an administrative assistant. These documents are not sufficient to establish that respondent was incapacitated for the performance of duty when she retired.

10. CalPERS referred respondent to several evaluators: to Thomas S. Allems, M.D., M.P.H., to evaluate her claim that she is disabled due to internal medicine conditions; to George E. Becker, M.D., to evaluate her claim that she is disabled due to psychological conditions; and to John H. Welborn, Jr., M.D., to evaluate her orthopedic claims.

11. Dr. Allems is board certified in internal medicine and occupational medicine. He examined applicant on April 17, 2013, authored reports dated May 3, 2013, and June 6, 2015, and testified at hearing.

Dr. Allems examined respondent with respect to her disability claim based on hypertension, diabetes and liver disease. He took a history from her, performed a physical examination, and reviewed her medical records. Dr. Allems reached diagnoses of essential hypertension; type 2 diabetes with poor control; status post liver transplant for cirrhosis due to Hepatitis C; abdominal incision hernia status post multiple repairs; and carpal tunnel "suggested on clinical basis, no history of treatment." Dr. Allems concluded that respondent's hypertension needed more diligent medical management, and that her diabetes required better medical management and self-management, including diet, weight loss and exercise. Neither condition, in Dr. Allems's opinion, disabled her from performing her usual duties at the time she retired. With respect to respondent's liver condition, Dr. Allems found no evidence that it was disabling at the time respondent retired. When he saw respondent in April 2013, Dr. Allems questioned whether that condition might have deteriorated based on applicant's report that she had a liver biopsy "pending." After reviewing additional documents submitted by respondent, however, Dr. Allems concluded in his June 16, 2015 supplemental report that the records do not show that respondent's liver condition has decompensated.

12. Dr. Becker is a board certified psychiatrist. He examined applicant at his office on February 20, 2013, wrote a report that bears the same date, and he testified at



hearing. Dr. Becker took a detailed history from respondent, reviewed her medical records, did a mental status examination, and ordered psychological testing. Dr. Becker concluded that respondent had a major depression after death of her mother in 2009, but that it had substantially resolved when he saw her in 2013. Dr. Becker also concluded that respondent was unhappy in her work situation because of her stressful relationship with Valenzuela. In Dr. Becker's opinion, however, respondent did not have a psychiatric condition that disabled her from performing her usual duties when she retired in 2012.

Although, on her disability retirement application, respondent listed "depression" among the conditions that she felt were disabling, respondent testified at hearing that she is not depressed – she is angry with the way the district treated her.

13. Dr. Welborn is a board certified orthopedic surgeon. He examined respondent in connection with her orthopedic complaints. Dr. Welborn wrote reports dated April 22, 2013, and June 8, 2015, and he testified at hearing.

Dr. Welborn took a history from respondent, performed a physical examination, and reviewed her medical records. In addition to the bilateral hand complaints respondent listed on her disability retirement application, respondent complained to Dr. Welborn of right shoulder pain. Dr. Welborn felt that respondent made a poor effort on grip strength testing, and he did not see any atrophy in her hands to explain the weakness she complained of. He reports that applicant's EMG examination, which is used in the diagnosis of carpal tunnel syndrome, was negative. Respondent complained of tenderness "everywhere," which indicated to Dr. Welborn that her complaints had a nonorganic component. In Dr. Welborn's opinion, respondent's bilateral hand pain is probably due to arthritis, and she may have mild carpal tunnel syndrome, but he concluded that neither condition disables her for the performance of her usual duties as an administrative assistant.

## LEGAL CONCLUSIONS

1. A member of CalPERS who becomes "incapacitated for the performance of duty" shall be retired. (Gov. Code, § 21150.) The term "incapacitated for the performance of duty" is defined by the Public Employees' Retirement Law to mean "disability of permanent or extended and uncertain duration, as determined by the board, . . . on the basis of competent medical opinion." (Gov. Code, § 20026.) To determine whether an applicant is "incapacitated for the performance of duty," the courts look to whether the applicant is substantially disabled from performing her usual duties. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876; accord *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 859-860.) The applicant bears the burden of proof. (*Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 691.) In a case like this, where it has been some years since respondent has retired, it is respondent's burden to prove that she was incapacitated for the performance of duty at the time she retired. (*Button v. Board of Retirement* (1981) 122 Cal.App.3d 730, 739-740.)

2. It was not established by competent medical opinion that respondent's medical or psychological conditions incapacitated her for the performance of duty at the time she retired. (Findings 8 through 13.)

ORDER

The application of respondent Elisa Manzo for disability retirement is denied.

DATED: July 10, 2015

A handwritten signature in black ink, appearing to read 'D. Benjamin', is written over a horizontal line.

DAVID L. BENJAMIN  
Administrative Law Judge  
Office of Administrative Hearings