

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

MELINA L. RIEBLING and
CALIFORNIA STATE UNIVERSITY,
NORTHRIDGE,

Respondents.

Case No. 2015-0295

OAH No. 2015100358

PROPOSED DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter in Glendale, California on May 17, 2016.

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

No appearance was made by or on behalf of respondent Melina L. Riebling or respondent California State University, Northridge.

During the hearing, CalPERS offered into evidence an exhibit containing private medical information. There is good cause to seal the exhibit. Therefore, concurrently with this Proposed Decision, the Administrative Law Judge is issuing an order to the parties sealing Exhibit 8.

The matter was submitted on May 17, 2016.

FACTUAL FINDINGS

1. On August 9, 2013, Riebling signed an application for Service Pending Disability Retirement from her job as a Collections Representative II at California State University, Northridge. By virtue of that employment, she is a member of CalPERS under the Public Employees' Retirement Law (PERL). (Gov. Code, § 20000 et seq.) In the application, she claimed disability due to an orthopedic (cervical spine and lumbar spine) condition.

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2. Riebling retired from service effective June 8, 2013, and has been receiving her service retirement allowance from that date. But on December 26, 2014, CalPERS denied her application for disability retirement.

3. On January 22, 2015, Riebling timely appealed the denial.

4. On September 29, 2015, CalPERS filed a Statement of Issues, requesting a ruling on whether Riebling was permanently disabled or substantially incapacitated from the performance of her usual and customary duties at the time of the application.

5. The Office of Administrative Hearings set the matter for hearing, and CalPERS gave respondents adequate notice of the hearing date, time, and place.

Background

6. Riebling began working as a Collection Representative II in May 2005. In 2006, she began having back problems, and sought treatment from various medical professionals. In her retirement application, she wrote she had degenerative disc disease, herniated discs, "severe edema," and "numbness/radiating pain down [her] legs & arms, into feet & hands," leaving her unable to sit, walk, or stand for more than a few minutes at a time. Riebling also wrote her condition made it difficult and painful to use the telephone and computer, and caused insomnia and concentration difficulties.

Independent Medical Examination

7. CalPERS scheduled an independent medical examination for Riebling with Clive M. Segil, M.D., an orthopedic surgeon. Dr. Siegel examined her on October 1, 2014, and also reviewed her medical records and a description of her job. He diagnosed her with a cervical spine sprain and lumbar spine sprain, but found she was not substantially incapacitated for the performance of her usual duties. He also found she was exaggerating her complaints, and not putting forth her best effort in the exam. During the hearing, he credibly testified as to the examination and these findings.

Essential Duties of a Collections Representative II

8. The duties of a Collections Representative II include placing collection calls, handling inquiries from borrowers, processing forms, preparing check requests, and similar tasks. The job does not involve physical exertion.

LEGAL CONCLUSIONS

1. Under PERL, a member of CalPERS who is "incapacitated for the performance of duty shall be retired for disability," if he or she has sufficient years of "state service" credit. (Gov. Code, § 21150.) "Disability" and "incapacity for performance of

duty” mean “disability of permanent or extended and uncertain duration, as determined by the board . . . on the basis of competent medical opinion.” (Gov. Code, § 20026.) “State service” includes service rendered as an employee of the state, a school employer, or a contracting agency of CalPERS. (Gov. Code, § 20069, subd. (a).) CalPERS does not dispute Riebling has enough years of state service credit, but does dispute she is “incapacitated for the performance of duty.” (Gov. Code, § 21150.)

2. To be retired for disability, a CalPERS member must be substantially unable to perform his or her usual duties. (*Hosford v. Bd. of Administration* (1978) 77 Cal.App.3d 854, 859-860; *Mansperger v. Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 876.) Riebling has the burden of proving she meets this standard by a preponderance of the evidence. (See *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5; *Harmon v. Bd. of Retirement* (1976) 62 Cal.App.3d 689, 691; Evid. Code, §§ 115, 500.)

3. Riebling did not prove by “competent medical opinion” she has a “disability of permanent or extended and uncertain duration.” (Gov. Code, § 20026.) She did not appear at the hearing, and thus presented no medical opinion evidence in support of her application. Dr. Segil provided the only such evidence, and opined Riebling was not substantially incapacitated for the performance of her usual duties. (Factual Finding 7.) Therefore, the order below is warranted.

ORDER

Respondent Melina L. Riebling’s application for disability retirement is denied.

DATED: June 3, 2016

DocuSigned by:
Thomas Heller
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THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings