

ATTACHMENT E

THE PROPOSED DECISION

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

In the Matter of the Application for Disability Retirement of:

ROSA M. GARIBAY DE GUZMAN,

and

**NAPA COUNTY SCHOOLS – OFFICE OF EDUCATION AND
ST. HELENA UNIFIED SCHOOL DISTRICT,**

Respondents.

Agency Case No. 2023-0636

OAH No. 2024010582

PROPOSED DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on June 6, 2024, by videoconference.

Bryan R. Delgado represented the California Public Employees' Retirement System (CalPERS).

There was no appearance by or on behalf of respondent Rosa M. Garibay De Guzman, and the matter proceeded as a default hearing pursuant to Government Code section 11520.

Assistant Superintendent Chris Heller observed the hearing on behalf of St. Helena Unified School District, but did not participate substantively.

The record closed and the matter was submitted for decision on June 6, 2024.

FACTUAL FINDINGS

1. Respondent Rosa M. Garibay De Guzman (respondent) was employed by Napa County Schools – Office of Education and St. Helena Unified School District. At the time respondent filed her application for disability retirement, she was employed as a Para-Educator III Special Education. By virtue of this employment, she was a local miscellaneous member of CalPERS subject to Government Code section 21150.

2. Respondent signed an application for disability retirement on December 10, 2022, with a claim based on neurological conditions (cognitive issues and headaches).

3. Respondent was evaluated by a neurologist at the request of CalPERS. As discussed below, that expert concluded respondent is not substantially incapacitated from performing her usual job duties.

4. On April 18, 2023, CalPERS sent a letter to respondent, denying her application for disability retirement. Respondent appealed the denial. A statement of issues was issued by CalPERS on January 8, 2024. This hearing followed.

5. Respondent's duties as a Para-Educator III Special Education include providing instructional, group and individual behavior, and clerical support to teachers and students in special education classrooms.

6. On August 11, 2021, respondent was working in a classroom when she developed left eye pain and a headache, and began to feel confused. After repeat visits to the emergency room that day and the next, an MRI was eventually performed, revealing respondent had suffered an ischemic stroke. Respondent was hospitalized for a few days and then released to return to work.

7. Respondent attempted to return to work but reported being confused. Her treating physician took respondent off work.

8. After several months, respondent returned to work on a half-time basis, for an unspecified period of time. Respondent reported that she still felt confused, but her employer told her she had to return to work on a full-time basis or stop working. Her treating physician took respondent off work again.

9. Respondent was evaluated by neurologist Daniel Shalom, M.D., who examined respondent and took a medical history on March 29, 2023, and reviewed respondent's medical records. Dr. Shalom wrote an independent medical evaluation report dated April 4, 2023, and a supplemental report dated July 5, 2023. Dr. Shalom testified credibly at hearing in this matter.

At the time of Dr. Shalom's evaluation, respondent reported that she continued to experience periodic confusion, almost daily moderate to severe headaches, and burning pain and numbness in her extremities and back.

Dr. Shalom conducted a neurological examination of respondent, with normal findings (apart from respondent getting the date wrong by one day). In Dr. Shalom's opinion, his examination of respondent revealed no cognitive deficits.

Dr. Shalom reviewed medical records from clinicians including respondent's treating physician, Julia Mary Shaver, M.D., and psychologist C. Naber, Ph.D. Respondent had a comprehensive neurocognitive evaluation in April 2022. Dr. Shaver reported that this evaluation "confirmed a continued diagnosis of mild neurocognitive disorder secondary to stroke as well as some mild residual left motor weakness." (As to the latter point, Dr. Shalom noted that a psychologist conducting neuropsychological testing would not have performed motor testing.)

On October 28, 2022, Dr. Shaver wrote: "[Respondent] thinks she could do her current work (which involves high level executive functioning and cognitive processing) at a level of 4 half-days a week, if that were accommodated. She is not able to work full days at her job with this level of cognitive deficit."

On May 24, 2023, Dr. Shaver wrote that respondent could not work more than part time because "she experiences cognitive fatigue more easily as a consequence of the neurocognitive disorder" and if she works longer than suggested, "she must take a nap for brain rest."

Dr. Shalom opined that respondent is not substantially incapacitated from performance of her usual job duties, because her neurological status was normal at the time of his examination, and there was no objective neurological evidence that suggested she could not do her usual work. Dr. Shalom emphasized that respondent had been able to return to work previously, and told her treating physician she was able to perform her job duties, although she wished to have a reduced schedule. He also found that respondent's headaches did not appear to be work-limiting. Given the lack of objective neurological impairment, Dr. Shalom was not persuaded by the notes from Dr. Shaver, who is not a neurologist, and who discussed respondent in terms more applicable to traumatic brain injury ("brain rest") than to respondent's stroke.

10. Respondent did not appear at the hearing and presented no evidence in support of her application.

LEGAL CONCLUSIONS

1. Government Code section 21150, subdivision (a), provides that a CalPERS member who becomes incapacitated for the performance of duty shall be retired for disability, if the member is credited with five years of state service. The burden of proof is on the employee to establish that she is incapacitated, by a preponderance of the evidence. (*Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 691; Evid. Code, § 115.)

2. The terms "disability" and "incapacity for the performance of duty" mean "disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board, . . . on the basis of competent medical opinion." (Gov. Code, § 20026.) An applicant is "incapacitated for performance of duty" if she is substantially unable to perform the usual duties of her position. (*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.)

3. Dr. Shalom testified credibly as to his medical opinion that respondent is not substantially incapacitated for performance of duty, and as to the bases for that opinion. (Factual Finding 9.) Respondent did not appear at hearing and did not present competent medical evidence in support of her application. (Factual Finding 10.) Accordingly, respondent has not met her burden of establishing that she is entitled to a disability retirement, and the application must be denied.

ORDER

The application of Rosa M. Garibay De Guzman for disability retirement is denied.

DATE: 06/25/2024



HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings