

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 Industrial Disability

Retirement of:

CHRISTOPHER L. LIDDELL, Respondent

and

DEPARTMENT OF JUSTICE, Respondent

Agency Case No. 2023-0488

OAH No. 2023120003

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 1, 2024, by videoconference.

Mehron Assadi, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Christopher L. Liddell, respondent, appeared on his own behalf.

No appearance was made on behalf of the Department of Justice (DOJ).¹ A Notice of Hearing was properly served on DOJ. This matter proceeded as a default against DOJ under Government Code section 11520, subdivision (a).

After evidence was received, the record was closed, and the matter was submitted for decision on October 1, 2024.

ISSUE

The issue to be decided is whether respondent was substantially incapacitated from the performance of his usual and customary duties as a DOJ Crime Analyst at the time he applied for Industrial Disability Retirement (IDR).

FACTUAL FINDINGS

Jurisdictional Matters

1. CalPERS is the state agency responsible for administering retirement benefits to eligible employees. (Gov. Code, § 20000 et seq.) Respondent was employed as a Crime Analyst with DOJ. By virtue of his employment, respondent is a state industrial member of CalPERS subject to Government Code sections 20048, 21150, and 21151.

¹ The term “respondent” is used throughout this proposed decision to refer to Christopher L. Liddell only.

2. On September 6, 2022, respondent signed and filed an application for service retirement pending IDR. In the application, respondent claimed disability on the basis of a "cardiological (chronic heart failure, dilated cardiomyopathy) condition." In his application, he cites October 15, 2021, as the date the disability occurred.

In a letter dated April 24, 2023, CalPERS denied respondent's application for IDR. CalPERS states in this letter that it is denying his IDR application based on its review of the reports from Hyungjin Benjamin Kim, D.O., Joan Haynes-Lee, M.D., and Robert B. Weber, M.D. CalPERS retained Dr. Weber to conduct an independent medical evaluation (IME) and prepare a report to determine whether respondent has a medical and/or psychiatric condition that arises to the level of a substantial incapacity to perform his usual job duties as a Crime Analyst for DOJ.

3. Respondent timely appealed CalPERS's denial. Respondent in his appeal letter states that his "overall health picture is not limited to my chronic health failure, and dilated cardiomyopathy . . ." He does not identify what these other conditions might be in his letter. At the hearing he sought to argue that he has medical conditions other than a cardiac condition that are a basis for IDR.² Complainant objected, and the objection was sustained. Only evidence relating to respondent's cardiac condition is considered.

4. On November 13, 2023, Sharon Hobbs, in her official capacity as Chief of CalPERS's Disability and Survivor Benefits Division, signed and filed a Statement of

² These other conditions are documented in a Social Security decision dated August 26, 2024, granting respondent's application for Social Security disability. That decision as it relates to the issue in this matter is discussed below.

Issues for purposes of the appeal. The matter was set for hearing, pursuant to Government Code section 11500 et seq.

Duties of a Crime Analyst

5. The physical demands of a Crime Analyst include the ability to work at a computer workstation and type for extended periods of time, some standing and reaching is required, as is the ability to lift up to 50 pounds.

Dr. Weber's IME

6. CalPERS, as noted, retained Dr. Weber to evaluate respondent. Dr. Weber is a board-certified cardiologist. He examined respondent on March 23, 2023. His evaluation included his examination of respondent and review of medical records, including the records of Drs. Kim and Lee, which CalPERS identified in its determination letter. Dr. Weber prepared an initial report and an amended report. Dr. Weber's testimony and reports are summarized as follows:

7. In October 2021, respondent collapsed at home. He tried to walk and collapsed again. Paramedics took him to the hospital, where he was assessed with congestive heart failure. He underwent an echocardiogram and was assessed with a 35 percent ejection fraction. He was told he might need to have an Automatic Implantable Cardioverter Defibrillator device implanted to prevent life-threatening arrhythmias. Six months later, he underwent another echocardiogram, and his ejection fraction improved to 45 percent. Respondent was treated with medications.

8. Respondent told Dr. Weber he continued to have frequent dyspnea on minimal exertion, he awakened frequently at night, he had swelling in his feet and

ankles. He also said that he had pain in the left side of his chest with radiation to the left arm.

9. Based on his examination of respondent and his review of the records, Dr. Weber diagnosed respondent with hypertension controlled, cardiomyopathy with mildly reduced systolic function, atypical chest pain, obesity, obstructive sleep apnea and asthma. His heart failure is very well-controlled due to an excellent and appropriate regimen.

10. Dr. Weber testified respondent's ejection fraction significantly improved from 35 percent to 45 percent, which is near normal. Clinically and by physical examination, respondent does not manifest any signs of congestive heart failure. Dr. Weber's physical examination of respondent also did not indicate respondent has congestive heart failure. There was a lack of objective signs to indicate this. His heart tones were good, and Dr. Weber observed no leg and ankle swelling.

Dr. Weber found it significant that respondent has been swimming because his ability to swim further suggests he does not suffer from congestive heart failure.

11. In support of his assessment Dr. Weber cited a March 29, 2024, Cardiology Progress Note from cardiologist A. Seliem, M.D. Dr. Seliem states in this note that "[respondent] states his current activity level is walking. He has no [shortness of breath]. He has no [shortness of breath] at rest. He has no orthopnea. He has no PND [awakening from sleep with breathlessness]. He has no edema [swelling]. He has fatigue."

12. Based on his evaluation and the records he reviewed, Dr. Weber concluded that respondent does not have an actual and present cardiac condition that

rises to the level of substantial incapacity to perform his usual job duties, and he is not substantially incapacitated.

13. Dr. Weber further stated he believed respondent could still perform the customary duties of his job even with the requirement that he be able to occasionally lift 50 pounds or more. Dr. Weber stated that lifting up to 50 pounds or more is not a customary duty of a Crime Analyst based on the summary of the job duties he reviewed.

14. In support of his IDR application, respondent submitted a decision from Social Security finding him disabled for Social Security disability benefits. Social Security found him disabled based on degenerative disc disease, obesity, heart failure, and posttraumatic stress disorder. Dr. Weber reviewed this decision as it relates to respondent's IDR application.

15. Dr. Weber testified that the medical evaluator identified in the decision was not a cardiologist, and this evaluator "lumped" together other medical conditions respondent identified as the basis of his Social Security disability application. Dr. Weber did not change his opinion that respondent does not have a cardiac condition that rises to the level of substantial incapacity to perform his usual job duties, and that he is not substantially incapacitated.

Respondent's Evidence

16. Respondent chose not to testify. He relied solely on Social Security's decision to support his application he cannot lift up to 50 pounds as detailed in the job description for a Crime Analyst.

Evaluation

17. As noted above, Social Security found that respondent qualified for Social Security disability benefits based on degenerative disc disease, obesity, heart failure, and posttraumatic stress disorder. Respondent, here, seeks disability retirement on the basis of a cardiac condition. Social Security's decision is not binding upon CalPERS. The standard for determining whether an applicant is disabled for the purpose of Social Security Disability is different than the standard applicable for disability retirement. The determination in this matter is whether respondent qualifies for disability retirement under the Government Code, which must be based on competent medical opinion. Respondent offered no such opinion, and he did not refute Dr. Weber's opinion that he was not substantially incapacitated from performing his usual and customary duties as a Crime Analyst at DOJ when he applied for IDR.

LEGAL CONCLUSIONS

1. Respondent is a state industrial member of CalPERS subject to Government Code sections 20048, 20382, 21150, and 21151. To qualify for IDR, respondent must prove that, at the time he applied, he was "incapacitated physically or mentally for the performance of [his] duties . . ." (Gov. Code, § 21156, subd. (a)(1).) As defined in Government Code section 20026, "disability" and "incapacity for performance of duty" as a basis of retirement, 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.

2. An applicant seeking service-connected disability retirement has the burden of proving his eligibility for such benefits. (*McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051 fn. 5.) The burden of proof is by a preponderance of the evidence. (*Glover v. Bd. of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

3. The CalPERS Board of Administration has designated precedential decisions that contain significant general legal or policy determinations of general application that may reoccur. The Board, in one such decision, *In the Matter of the Application for Disability Retirement of Theresa V. Hasan, Respondent, and Dept. of Corrections, Respondent, dated January 18, 2000*, (made precedential by the CalPERS Board of Administration effective April 21, 2000, Precedential Decision Case No. 00-01)(*Hasan*) emphasizes that an IDR applicant has the burden to show that he or she is disabled for IDR purposes based on the "substantial inability of the applicant to perform his usual duties." (*Hasan, supra*, citing *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876 (emphasis in original).)

In its analysis of the facts in that case, the Board states that because making physical arrests are not a common part of the job duties of a game warden, the applicant's difficulties with tasks relating to arresting an individual did not mean he was unable to "substantially carry out the normal duties of a fish and game warden." (*Hasan, supra*, citing *Mansperger* at p. 876.)

The Board reached a similar conclusion in its precedential decision, *In the Matter of the Application for Disability Retirement of Ruth A. Keck, Respondent, and LA Co. Schools, Respondent, dated May 16, 2000*, (made precedential by the CalPERS Board of Administration effective September 29, 2000, Precedential Decision Case No. 00-05 (*Keck*)). Citing *Mansperger*, the Board states: "[I]t is clear from the case law that the difficulty in performing certain tasks is not enough to support a finding of

disability. A person must be substantially incapacitated from performing his or her usual duties." (*Keck, supra.*)

Determination


4. Respondent did not prove by competent medical evidence that he was substantially incapacitated from performing his usual and customary duties as a Crime Analyst at DOJ when he applied for IDR. The only evidence respondent submitted to support his application was Social Security's August 26, 2024, decision finding him disabled for Social Security disability benefits. Social Security's decision is not binding upon CalPERS. As noted above, the standard of Social Security disability benefits is different than the standard for disability retirement, which requires competent medical opinion. Respondent did not submit such an opinion. Also, Social Security based its decision on orthopedic and psychological conditions, in addition to a cardiac condition. Respondent only identified his cardiac condition in his application as the basis of his IDR application.

5. Dr. Weber persuasively testified that respondent was not substantially incapacitated from performing his usual and customary duties as a Crime Analyst at DOJ at the time of his IDR application due to his cardiac condition. He found a lack of objective evidence to conclude respondent has a cardiac condition that precludes him from performing his usual duties as a Crime Analyst. He also opined correctly that respondent's difficulty lifting up to 50 pounds does not mean he cannot perform the customary duties of a Crime Analyst. (See CalPERS precedential decisions, *Hasan* and *Keck, supra.*) Respondent did not show that lifting up to 50 pounds is a usual and customary part of the duties of a Crime Analyst. Accordingly, respondent is not entitled to IDR, pursuant to Government Code section 21156, subdivision (a)(1).

ORDER

The appeal of respondent Christopher L. Liddell is denied.

DATE: October 18, 2024


Abraham M. Levy (Oct 18, 2024 16:09 PDT)

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings