

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Statement of Issues
Against:

BAHRAM Z. FOADI,

Respondent,

and

DEPARTMENT OF TRANSPORTATION
DISTRICT 4,

Respondent.

PERS Case No. 2015-0025

OAH No. 2015071139

PROPOSED DECISION

This matter was heard on October 7, 2015, at Los Angeles, California, before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California. Complainant California Public Employees' Retirement System (PERS) was represented by Christopher Phillips, Staff Counsel. Respondent Bahram Z. Foadi (respondent Foadi) was not present, despite having been properly served with notice of the hearing. Respondent Department of Transportation District 4 did not appear, despite having been properly served with notice of the hearing.

Evidence was received by way of testimony and documents. The record was closed and the matter was submitted for decision on October 7, 2015.

FINDINGS OF FACT

The Administrative Law Judge finds the following facts:

Parties and Jurisdiction

1. The Statement of Issues was signed on behalf of PERS by complainant Anthony Suine in his official capacity as Chief, Benefits Services Division of PERS.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED

October 23, 2015
[Signature]

2. Respondent Foadi was employed by the Department of Transportation District 4 (DOT). At the time of his application for retirement, he was employed as a Transportation Engineer. By virtue of his employment, respondent Foadi is a miscellaneous member of PERS subject to Government Code section 21150, subdivision (a), under which a state member who is "incapacitated for the performance of duty shall be retired for disability pursuant to this chapter if he or she is credited with five years of state service"

3. Due to the failure to appear at the hearing by respondent Foadi and respondent DOT after service of proper notice of the proceedings, their defaults are noted pursuant to Government Code section 11520. (All further references to respondent refer to respondent Foadi.)

4. Respondent's application for service pending industrial disability retirement was signed November 4, 2013. He claims disability on the basis of three heart attacks suffered from November 2011 to February 26, 2012. Although complainant alleges that respondent is receiving his service retirement allowance, there was no evidence of such receipt.

5. Based upon review of reports from Dr. John Fletcher (respondent's examining doctor) and Dr. Robert Weber (PERS' reviewing doctor), PERS notified respondent by letter dated October 8, 2014 (exhibit 4), of its determination that respondent's cardio-vascular (heart) condition was not disabling and the conclusion that he was not substantially incapacitated from performance of his duties as a Technical Engineer for DOT.

6. Respondent filed a letter of appeal dated November 7, 2014 (exhibit 5), and this hearing ensued.

Respondent's Medical Condition

7. Doctor Fletcher's documentation is found in exhibit 9, which includes a PERS' form titled Physician's Report on Disability, follow-up questions from PERS with Dr. Fletcher's answers, treatment records for two visits, and lab results of blood tests. Dr. Fletcher practices internal medicine. He saw respondent October 29, 2013 and January 21, 2014. In the Physician's Report on Disability, signed October 29, 2013, Dr. Fletcher noted respondent had the following exam findings and diagnoses: "MI x 3," most likely a reference to three myocardial infarctions; diabetes; "CAD," most likely coronary artery disease; two stents; and overweight. In response to whether there are any restrictions or limitations, he wrote "↓ phys activity," most likely for reduced physical activity. Dr. Fletcher marked "Yes" that respondent was currently, substantially incapacitated from performance of his usual duties. When asked to specify what job duties the respondent could not perform, Dr. Fletcher wrote "Exhausted by current work. Could do sedentary work." He noted the incapacity was permanent. Dr. Fletcher had not reviewed a job duty statement, but had reviewed the form listing physical requirements of the position.

8. PERS requested further information. Dr. Fletcher responded, dated May 7, 2014. (Exhibit 9.) The date of the last examination was January 21, 2014. The objective examination findings were "HTN," most likely hypertension, and diabetes. He was asked: "Is the member currently, substantially incapacitated from performing the usual duties of the position for their current employer?" Dr. Fletcher did not check either the "Yes" box or the "No" box. He wrote "unknown."

9. Robert B. Weber, M.D., examined respondent, wrote a report (exhibit 8), reviewed Dr. Fletcher's records, and testified at the hearing. By virtue of his education, training and experience, he is qualified to offer expert opinions in this matter. Dr. Weber is a Fellow of the American College of Cardiology and a certified specialist in cardiovascular disease. Dr. Weber's report is dated August 29, 2014, also the date the examination took place. Respondent provided a history, including events of February 26, 2012, when, after moving several boxes and feeling ill, he was hospitalized and underwent either a stent or balloon angioplasty. Sometime later he returned to work under modified duties, and he would tire easily. He retired soon after reaching age 62. Dr. Weber's examination impressions were: (1) history of coronary artery disease; (2) status post three coronary artery catheterizations and two stent implants; (3) possible history of myocardial infarctions and/or episodes of acute coronary syndrome; (4) hypertension; (5) hyperlipidemia; (6) Type 2 diabetes; and (7) obesity. Dr. Weber reviewed the form listing physical requirements of the position and the job duty statement (exhibits 10 and 11). He reviewed the records and forms from Dr. Fletcher.

10. Dr. Weber offered the following opinions in his report. Respondent was able to perform all the job duties that were reviewed. Respondent was not substantially incapacitated for performance of his usual duties. In testimony, Dr. Weber noted that there were no records reviewed from the times of the prior cardiac events, procedures and treatments, and respondent's relation of his medical history was not specific. Dr. Weber noted several risk factors, including a history of smoking, diabetes and hypertension. Dr. Weber based his conclusion that respondent was not substantially incapacitated partially on respondent's answers to the effect that he had no chest pain or pressure and no palpitations, and on the examination where there were no signs of active heart disease. There was nothing in the records and forms from Dr. Fletcher that changed his opinions.

11. The totality of the evidence establishes that respondent is not substantially incapacitated from performing his usual duties as a Technical Engineer for the DOT.

CONCLUSIONS OF LAW AND DISCUSSION

Based upon the foregoing findings of fact, the Administrative Law Judge makes the following conclusions of law.

1. Respondent is seeking a benefit and therefore bears the burden of proof. When reviewing the denial of an application for disability benefits, the burden of proof is on

the applicant. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) The standard of proof is by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.)

2. Decisions on disability are governed by various sections of the Government Code, including:

Section 20026, which defines “disability” and “incapacity for performance of duty” as meaning disability of permanent or extended and uncertain duration, as determined by the PERS’ board “on the basis of competent medical opinion. . . .”

Section 21154, which provides that, if a member has applied for disability retirement, the PERS board may “order a medical examination of a member who is otherwise eligible to retire to determine whether the member is incapacitated for the performance of duty. . . .”

Section 21156, subdivision (a)(1), which states that a member may be retired for disability if the medical examination and other available information show that the “member in the state service is incapacitated physically or mentally for the performance of his or her duties”

3. “Incapacitated for the performance of duty” has been interpreted as the “substantial inability of the applicant to perform his usual duties,” as opposed to mere discomfort or difficulty. (*Mansperger v. Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 877; *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854.)

4. Dr. Fletcher initially concluded that respondent was substantially and permanently incapacitated from the performance of his usual duties. However, on a subsequent request for more information, he noted that it was “unknown” whether respondent was substantially incapacitated. Dr. Weber opines that respondent is not substantially incapacitated from the performance of his usual duties. Therefore the question is raised as to the weight to be given to the medical reports and opinions.

5. The doctors’ diagnoses and opinions are as good as the information upon which they rely. (*White v. State of California* (1971) 21 Cal.App.3d 738; *Kennemur v. State of California* (1982) 133 Cal.App.3d 907.) “Similarly, when an expert’s opinion is purely conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, that opinion has no evidentiary value because an ‘expert opinion is worth no more than the reasons upon which it rests.’ (Citation.)” (*Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1116.)

6. Dr. Fletcher’s opinions are entitled to some weight, as he examined respondent twice. He had only some information about respondent’s job duties. His opinion of respondent’s incapacity was at first affirmative, but soon after listed as “unknown.” Dr. Fletcher practices internal medicine. Dr. Weber, as a cardiologist, specializes in the area of

respondent's claimed disability. Dr. Weber offered a more comprehensive review and analysis, and amply supported his opinion that respondent was not substantially incapacitated from performing his usual duties by referring to his examination of respondent, his review of respondent's few medical records, and respondent's history.

7. Respondent has not sustained his burden of establishing that he is incapacitated physically for the performance of duty, as required under Government Code sections 21154 and 21156, and is therefore not entitled to disability retirement. See Findings 4 and 7 through 11, and Legal Conclusions 1 through 6.

ORDER

The application for disability retirement of respondent Bahram Z. Foadi is denied.

DATED: October 21, 2015.

DocuSigned by:
David Rosenman
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DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings