

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter of the Appeal of Reinstatement from Disability
Retirement of:**

CLAUDIA E. OROZCO and COUNTY OF SOLANO, Respondents

Agency Case No. 2023-0891

OAH No. 2024020024

PROPOSED DECISION

Sean Gavin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 29, 2024, from Sacramento, California.

Bryan Delgado, Staff Attorney, represented Sharon Hobbs, Chief of the Disability and Survivor Benefits Division of the California Public Employees' Retirement System (CalPERS).

Respondent Claudia Orozco appeared without an attorney.

There was no appearance by or on behalf of the County of Solano (County) and a default was taken pursuant to Government Code section 11520.

Evidence was received, the record closed, and the parties submitted the matter for decision on July 29, 2024.

ISSUE

Is respondent disabled or substantially incapacitated from performing her usual duties as a Social Worker III for the County due to orthopedic (right shoulder, right elbow, right wrist, and right carpal tunnel syndrome) conditions?

FACTUAL FINDINGS

Respondent's Employment and Disability Retirement

1. As of August 2021, respondent worked as a Social Worker III for the County. By virtue of her employment, respondent is a local miscellaneous member of CalPERS subject to Government Code section 21150.

2. On August 3, 2021, respondent signed and subsequently filed an application for disability retirement with CalPERS (application). Respondent sought disability retirement based on orthopedic conditions affecting her right shoulder, elbow, wrist, and carpal tunnel. On January 12, 2022, CalPERS approved respondent's disability retirement, effective August 3, 2021, based on her stated orthopedic conditions. Respondent was 46 years old when she began her disability retirement.

CalPERS's Review of Respondent's Disability Retirement

3. On February 14, 2023, CalPERS notified respondent it would review her eligibility to determine whether she continued to qualify for disability benefits,

pursuant to Government Code section 21192. CalPERS then scheduled respondent for an independent medical examination (IME) with Robert Henrichsen, M.D.

4. Respondent underwent the IME in July 2023, after which Dr. Henrichsen prepared a written report of his findings. After reviewing Dr. Henrichsen's IME report and respondent's other medical records, CalPERS determined she was no longer disabled or incapacitated from performing her usual duties as a Social Worker III for the County due to orthopedic conditions. CalPERS notified respondent and the County of its determination on August 24, 2023. Respondent timely appealed the determination. This hearing followed.

Duties of a Social Worker III

5. With her original application, respondent submitted a Physical Requirements of Position/Occupational Title form for the Social Worker III position. The form provides the following information about the physical requirements of the position:

Infrequent tasks (between 5 and 30 minutes per day):
lifting/carrying between 11 and 50 pounds; bending and twisting at the neck and waist; and reaching above the shoulder.

Occasional Tasks (between 31 minutes and 2.5 hours per day): lifting up to 10 pounds; reaching below the shoulder; and holding and light grasping.

Frequent Tasks (between 2.5 and 5 hours per day):
interacting/communicating with clients and the public in

person and by phone; sitting; standing; walking; using a computer keyboard and mouse; and driving.

Constant Tasks (more than 5 hours per day):
interacting/communicating with coworkers.

6. In addition, the County's job description for Social Worker III includes a list of physical requirements that is substantially similar to the tasks listed in the Physical Requirements of Position/Occupational Title form. In addition to describing typical office work, the job description states, "[s]ome assignments may require strength to lift and move clients with appropriate assistance."

Dr. Henrichsen's IME and Hearing Testimony

7. Dr. Henrichsen received his medical degree in 1967 and his California medical license in 1968. After completing an orthopedic residency and fellowship, he practiced orthopedic medicine in Auburn, California, for almost 40 years. He became a board-certified orthopedic surgeon in 1974 and a fellow of the American Academy of Orthopedic Surgeons in 1977. Since approximately 2003, he has performed IMEs for CalPERS and is familiar with the CalPERS substantial incapacity standard.

8. On July 25, 2023, Dr. Henrichsen conducted an IME on respondent. He interviewed respondent, took a medical history and an accounting of her symptoms, reviewed her medical records and job duties, and physically examined her. Thereafter, Dr. Henrichsen wrote an IME report. He testified at hearing consistent with his report.

9. Based on the above, Dr. Henrichsen identified six diagnoses for respondent: (1) tendinitis in her right elbow; (2) MRI evidence of a partial subscapularis tendon tear in her right shoulder; (3) no good evidence of clinical carpal tunnel

syndrome; (4) symptoms greater than findings; (5) amplified pain syndrome; and (6) history of anxiety and depression. Regarding elbow tendinitis, Dr. Henrichsen opined:

Elbow tendinitis is present. She has only had moderate treatment. She had one injection medially and laterally with some benefit, no provider identified a surgical target and she had several orthopedic evaluations. She did use counterforce orthosis which is a reasonable form of treatment, but is not mentioned in the medical records and she explained that it caused her swelling.

10. Regarding carpal tunnel syndrome, Dr. Henrichsen opined:

My examination and other provider's examination does not support the diagnosis of carpal tunnel syndrome. Carpal tunnel syndrome is a nerve compression that produces certain referred symptoms. Some providers identified a positive Tinel sign, but no provider explained what happened with the positive Tinel sign. There is a large difference there because when one does not explain Tinel sign tingling in your small finger or your thumb unless something like that was explained then a subsequent evaluator has a little confidence in that statement. Other times, her Tinel signs were negative, usually her Phalen's test was negative. Today's her Phalen's sign produced some numbness in her palm and in the dorsum of her hand, neither of which makes medical sense. She may have had

those symptoms, but those symptoms do not support any nerve impingement.

11. Dr. Henrichsen reviewed the findings of respondent's previous medical providers. He noted, in relevant part:

My conclusions are different than that of Dr. Bellomo. Experienced physicians understand that carpal tunnel syndrome is a clinical evaluation issue. Electrical studies are nice if they are helpful, but I again reviewed Dr. Miller's evaluation of January 2, 2020, where she reports that the electrical study including the nerve conduction study was normal. PA Pugach on the other hand indicates it showed some abnormality. These are confusing issues when one does not have the original study to review. However, my examination does not demonstrate carpal tunnel syndrome and some of her hand examination makes no medical sense.

12. Based on his IME and review of respondent's medical records, Dr. Henrichsen concluded respondent does not have an actual and present orthopedic impairment in her right shoulder, elbow, wrist, or carpal tunnel that substantially incapacitates her from performing her usual job duties as a Social Worker III for the County. He explained his conclusions as follows:

The objective examination findings in the wrist do not support carpal tunnel syndrome; in the elbow she has tenderness and some pain and I medically believe she has

some chronic lingering elbow tendinitis, but I do not find it sufficient to support substantial incapacity. In the shoulder examination, it was essentially normal and the images were abnormal and the shoulder evaluation by repeated evaluators does not demonstrate substantial incapacity.

Respondent's Evidence

13. Respondent testified at hearing. She was forced to medically retire from the County in 2021. She first sought an alternative position that required less report writing, but the County was unable to accommodate her. She believes she is entitled to CalPERS disability benefits because she worked hard and "paid into CalPERS." She still experiences pain, swelling, and numbness in her right arm. She cannot carry more than 10 pounds. She sometimes cannot remove clothing over her head. She takes medication, but some of it causes her to be too drowsy to drive, which she must do as a Social Worker III. She would return to work for the County in any unit other than Child Protective Services. She believes her willingness to return to work proves she is not faking or exaggerating her injuries.

14. In 2021, respondent applied for social security benefits. In 2023, after a hearing before an ALJ with the Social Security Administration (SSA), she was awarded benefits. She continues to receive those benefits. She submitted the SSA ALJ's decision into evidence. The ALJ based his decision on standards within the Code of Federal Regulations, not the CalPERS substantial incapacity standard.

15. Respondent also submitted into evidence Patient Work Status Reports from Physician's Assistant (PA) Leonid Pugach. The reports, which range from April through November 2023, do not include any diagnoses of orthopedic conditions.

Rather, they each identify modified duties of "Limited/No reaching, gripping, grasping, torquing, handling, fingering, keyboarding, using of computer mouse." They also each include the handwritten comment: "Take 15 min. break after 30 min. of typing."

Analysis

16. CalPERS previously granted respondent's application for disability retirement because she was substantially incapacitated from performing as a Social Worker III for the County due to orthopedic conditions affecting her right arm. She is under the minimum age for voluntary service retirement for a Social Worker, and CalPERS reevaluated her continued eligibility for disability retirement benefits. CalPERS has the burden of proving she should be reinstated as a Social Worker III because her orthopedic conditions no longer substantially incapacitate her.

17. The persuasive evidence proved respondent is no longer substantially incapacitated from performing her job duties for the County. Dr. Henrichsen examined her, reviewed her medical records, and evaluated her using the CalPERS substantial incapacity standard. Based thereon, he found that respondent's conditions do not preclude her from performing her usual job duties. His conclusions were credible and supported by his experience and training, especially in the field of orthopedics.

18. The findings and opinions of respondent's other medical professionals, as summarized in Dr. Henrichsen's IME report and reflected in PA Pugach's work status reports, were less persuasive than Dr. Henrichsen's opinions for two reasons. First, the evidence did not establish that the other professionals specialize in orthopedic medicine. In contrast, Dr. Henrichsen has extensive experience and training as an orthopedic surgeon.

19. Second, when Dr. Henrichsen testified at hearing, he explained his reasons for not only his own findings, but also for disagreeing with respondent's other medical providers. Dr. Henrichsen credibly explained why respondent's conditions do not demonstrate her continued substantial incapacity using the CalPERS standard. In contrast, respondent's other medical professionals did not testify at hearing, were not subject to cross-examination, and did not respond to Dr. Henrichsen's conclusions. When weighed against each another, Dr. Henrichsen's findings and opinions were more persuasive than those of the other medical professionals.

20. Furthermore, neither the SSA ALJ's decision nor PA Pugach's work status reports constituted competent medical evidence related to respondent's substantial incapacity under the CalPERS standard. The social security decision applied a different legal standard, and PA Pugach did not diagnose or identify any specific conditions. Consequently, respondent's evidence was inadequate to rebut Dr. Henrichsen's findings.

21. When all the evidence is considered, CalPERS proved through competent medical evidence that respondent's orthopedic (right shoulder, right elbow, right wrist, and right carpal tunnel syndrome) conditions no longer substantially incapacitate her from performing her job duties for the County. Therefore, her appeal must be denied.

LEGAL CONCLUSIONS

1. CalPERS has the burden of proving by a preponderance of the evidence that respondent is no longer substantially incapacitated from performing her usual job duties as a Social Worker III for the County and should therefore be reinstated to her former position. (*In the Matter of the Application for Reinstatement from Industrial*

Disability Retirement of Willie Starnes (January 22, 2000, Precedential Decision 99-03.))

The term “preponderance of the evidence” means “more likely than not.” (*Sandoval v. Bank of America* (2002) 94 Cal.App.4th 1378, 1388.)

2. By virtue of her employment, respondent is a local miscellaneous member of CalPERS subject to Government Code section 21150. Effective August 3, 2021, CalPERS approved her disability retirement based on her orthopedic (right shoulder, right elbow, right wrist, and right carpal tunnel syndrome) conditions. Pursuant to Government Code section 21150, subdivision (a), “A member incapacitated for the performance of duty shall be retired for disability pursuant to this chapter if . . . she is credited with five years of state service, regardless of age.”

3. “Disability” and “incapacity for performance of duty” are defined in Government Code section 20026, which provides:

“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.

4. A member receiving disability retirement benefits who is under the minimum age for voluntary service retirement may be required to undergo medical evaluation to confirm she remains substantially incapacitated. (Gov. Code, § 21192.) If determined to no longer be substantially incapacitated, the member shall be reinstated to her former position or one in the same classification. (Gov. Code, § 21193.) Respondent is under the minimum age for voluntary service retirement. (Gov. Code, § 21060, subd. (a).)

5. As explained above, CalPERS met its burden to prove respondent is no longer substantially incapacitated from performing her usual duties of a Social Worker III for the County based on orthopedic conditions affecting her right arm. Consequently, CalPERS's request that respondent be reinstated from disability retirement must be granted.

ORDER

CalPERS's determination that respondent Claudia E. Orozco is no longer substantially incapacitated from performing the usual duties of a Social Worker III for the County of Solano due to orthopedic (right shoulder, right elbow, right wrist, and right carpal tunnel syndrome) conditions is AFFIRMED. Respondent's appeal is DENIED.

DATE: August 27, 2024



Sean Gavin (Aug 27, 2024 15:18 PDT)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings