

ATTACHMENT A

THE PROPOSED DECISION

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

In the Matter of the Appeal for Disability Retirement of:

CHANDRIKA A. BHATT,

Respondent,

and

**CALIFORNIA DEPARTMENT OF STATE HOSPITALS,
ATASCADERO,**

Respondent.

Agency Case No. 2023-1069

OAH No. 2024080057

PROPOSED DECISION

Harden Sooper, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on January 15, 2025.

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

Chandrika A. Bhatt (respondent) represented herself.

Jaycob Javaux, Personnel Officer, represented respondent California State Department of Hospitals, Atascadero (DSH).

The ALJ received testimony and documentary evidence. The record closed and the matter was submitted for decision at the conclusion of the hearing.

SUMMARY

Respondent appealed CalPERS' denial of her application for disability retirement. Respondent did not prove by a preponderance of the evidence she is substantially incapacitated from performing her usual and customary job duties as a Food Service Technician II. Her appeal is denied.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent was employed by DSH as a Food Service Technician II between February 2014 and July 2021. By virtue of her employment, respondent was a member of CalPERS.

2. On a date not disclosed by the evidence, respondent applied for disability retirement from her position as a Food Service Technician II. She cited lower

back, upper back, and pelvic injuries suffered after she fell off a ladder at work in July 2021.

3. In a letter dated October 31, 2023, CalPERS denied respondent's application, finding respondent was not substantially incapacitated from the performance of her job duties.

4. In a letter dated November 27, 2023, respondent appealed CalPERS' denial of her application. This hearing ensued.

Respondent's 2021 Injury and Subsequent Treatment

5. On July 26, 2021, respondent missed a rung while climbing a ladder at work, causing her to fall from a height of two and one-half feet. Respondent landed on her feet but felt immediate pain in her pelvic area. Respondent finished her shift and continued working the next two days, but her pain worsened over time, spreading to both her upper and lower back.

6. On July 28, 2021, respondent reported her pain to her supervisor, who referred respondent for treatment at an industrial clinic called MedStop Urgent Care in San Luis Obispo. Kyle Webber, M.D., diagnosed respondent with a back and pelvis strain. Dr. Webber prescribed a muscle relaxer and physical therapy. He also imposed restrictions on respondent's ability to work due to her injury, and respondent has not since returned to work.

7. Respondent has since sought treatment from both a pain specialist and a chiropractor. Between September 2021 and July 2022, respondent participated in physical therapy, which she found only marginally beneficial. In 2022, respondent also

participated in 13 sessions of acupuncture; respondent found the acupuncture beneficial, but it did not fully relieve her symptoms.

Respondent's Job Duties

8. Respondent worked 40 hours per week as a Food Service Technician II. She prepared coffee and sandwiches, cleaned dishes, organized the dining room for meals, and cleaned the service and dining areas. Her duties required her to stand, walk, bend, stoop, push, pull, and lift up to 50 pounds.

Independent Medical Examination

9. In a letter dated August 22, 2023, CalPERS retained G. Sunny Uppal, M.D., to conduct an examination of respondent in connection with her disability retirement application. Dr. Uppal is licensed to practice medicine in California and has practiced as an orthopedic surgeon since 1992; at hearing, Dr. Uppal testified he has served as an Independent Medical Examiner (IME) for CalPERS for "many years."

10. In a report dated October 10, 2023, Dr. Uppal concluded respondent did not have an actual or present orthopedic impairment rising to the level of substantial incapacity to perform her usual and customary job duties. Based on his October 7, 2023 examination of respondent and a review of respondent's medical records and job description, Dr. Uppal diagnosed respondent with the following: (1) a lumbar strain and spasm, (2) thoracic pain with no orthopedic diagnosis, and (3) no orthopedic evidence of hip or pelvis abnormality. Dr. Uppal noted respondent had subjective complaints of non-radiating pain in her upper back, lower back, and pelvis. He found she has a lumbar spine paraspinal spasm and some lumbar spine range of motion loss. His evaluation of her thoracic spine and pelvis was unremarkable. He noted no neurological issues. He reviewed magnetic resonance images (MRI) taken of

respondent's thoracic spine and pelvis in September and October 2021, respectively, and found them unremarkable.

11. In a supplemental report dated October 23, 2023, Dr. Uppal noted his opinion did not change based on his subsequent review of a September 2021 MRI of respondent's lumbar spine. The MRI was unremarkable except for minimal disc bulging. Dr. Uppal continued to opine respondent was able to return to her usual and customary duties based on available medical evidence regarding her thoracic spine, lumbar spine, and pelvis.

12. Dr. Uppal's testimony at hearing was consistent with his reports. He described respondent's examination as "essentially normal." He observed only mild spasms in respondent's lower back. Respondent's reflexes were normal. Her range of motion of her lumbar spine was slightly decreased. Dr. Uppal considered his and Dr. Webber's diagnoses relatively minor. Respondent's condition did not progressively worsen between her July 2021 injury and Dr. Uppal's October 2023 examination. Dr. Uppal noted respondent was able to treat her conditions using over-the-counter medications such as Tylenol, supporting his opinion respondent was not substantially incapacitated from performing her usual and customary job duties.

13. Dr. Uppal acknowledged Michael G. Klassen, M.D., as a Qualified Medical Examiner (QME), examined respondent in December 2022 and maintained restrictions on respondent's ability to work. Dr. Uppal explained a QME examines a patient for the sole purpose of identifying the cause of injury, any necessary work restrictions, and assigning an impairment rating. Dr. Uppal's role as an IME differed in that he conducted a physical examination and reviewed medical records to determine whether respondent was substantially incapacitated from performing her usual and customary

job duties. Whether a patient's employer, such as DSH in respondent's case, can accommodate their restrictions is beyond the scope of an IME.

14. Dr. Uppal's testimony, coupled with his October 2023 reports, was credible. Respondent presented no medical evidence to the contrary.

Respondent's Testimony

15. Respondent testified she still suffers from pain after her July 2021 injury. She cannot sit or stand for long periods of time. She complied with treatment plans from her doctors, including medication, physical therapy, and acupuncture, but her condition has not improved. She acknowledged she is not a doctor, but cited the work restrictions imposed by Drs. Webber and Klassen to support her disability retirement application.

16. Respondent further testified she applied for disability retirement only because DSH did not assign her to a light duty position to accommodate her work restrictions. She explained she wanted to work and asked DSH to assign her shifts for more than a year, but DSH denied her requests. She felt she had no choice but to apply for disability retirement.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Respondent bears the burden to prove by a preponderance of the evidence she is eligible for disability retirement. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) "Preponderance of the evidence"

means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Applicable Law

2. "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 CalPERS based on competent medical opinion. (Gov. Code, § 20026.)

3. "Incapacitated for the performance of duty" means "the substantial inability of the applicant to perform [their] usual duties." (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 877.)

Disposition

4. Respondent did not prove by a preponderance of the evidence she is eligible for disability retirement. Dr. Uppal rendered a competent medical opinion that respondent is not substantially incapacitated from performing her usual and customary job duties. Respondent presented no competent medical opinion to the contrary. In support of her application, respondent cited work restrictions imposed by Drs. Webber and Klassen. However, a person's inability to perform all their duties, as evidenced in respondent's case by those restrictions, does not amount to substantial incapacity under Government Code section 20026. (*Schrier v. San Mateo County Employees' Retirement Assn.* (1983) 142 Cal.App.3d 957, 961.) Mere discomfort, which may make it difficult for one to perform their duties, is likewise insufficient to establish incapacity. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 207.) Because respondent failed to meet her burden of proof, her appeal must be denied.

5. As set forth in CalPERS Precedential Decision 00-05, *In the Matter of the Application for Disability Retirement of Ruth A. Keck* (2000), an employer cannot terminate a CalPERS member for medical reasons after CalPERS has denied disability retirement to the employee on a finding they are able to perform the duties of their position. Such an employee is entitled to reinstatement to their former position, applying case law set forth in *Leili v. County of Los Angeles* (1983) 148 Cal.App.3d 985 and *Raygoza v. County of Los Angeles* (1983) 148 Cal.App.3d 1985. In respondent's case, the circumstances of her departure from DSH are unclear. The evidence therefore did not establish whether respondent is entitled to such relief.

ORDER

Respondent Chandrika A. Bhatt's appeal is denied. CalPERS' denial of her disability retirement application is affirmed.

DATE: **02/11/2025**

Harden Sooper

HARDEN SOOPER

Administrative Law Judge

Office of Administrative Hearings