

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter of the Application for Ordinary Disability
Retirement of:**

VERONICA D. CAGUIOA

and

COUNTY OF MONTEREY SHERIFF'S OFFICE, Respondents.

Agency Case No. 2021-0754

OAH No. 2021110343

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, State of California, Office of Administrative Hearings, heard this matter on March 21, 2022, and May 19, 2022, by videoconference.

Staff Attorney Nhung Dao represented California Public Employees' Retirement System (CalPERS).

Respondent Veronica D. Caguioa represented herself.

No appearance was made by or on behalf of respondent County of Monterey Sheriff's Office (Sheriff's Office).

The record closed and the matter was submitted for decision on May 19, 2022.

FACTUAL FINDINGS

1. Keith Riddle made and filed the Statement of Issues in his official capacity as Chief of the Disability and Survivor Benefit Division of CalPERS.
2. Respondent was employed by the Sheriff's Office as a Mailroom Clerk.¹ By virtue of this employment, respondent was a local miscellaneous member of CalPERS pursuant to Government Code section 21150.
3. The Sheriff's Office is a public agency contracting with CalPERS for retirement benefits for its eligible employees. (Gov. Code, § 20022.)
4. Respondent Caguioa's duties as a Mailroom Clerk included collecting, opening, stamping, sorting, and distributing mail; performing hand bindery operations to support printing production such as collating, stapling, and hand folding; maintaining files and records; and loading and unloading mail trucks.
5. The physical requirements of respondent Caguioa's position as a Mailroom Clerk included constantly lifting up to 50 pounds, power grasping, pushing and pulling, fine fingering, and light grasping.

¹ Respondent had been misclassified by the Sheriff's Office as an Office Assistant III.

6. On December 22, 2020, respondent Caguioa applied for ordinary disability retirement with an effective date of August 1, 2020. Respondent Caguioa listed her disabling conditions as carpal tunnel syndrome, tendinitis, and nerve pains.

7. In a letter dated July 20, 2021, CalPERS notified respondent Caguioa that it had determined that she was not permanently disabled or incapacitated for performance of her duties and that her application was denied. Respondent filed a timely appeal and this hearing ensued.

8. Respondent Caguioa was began experiencing pain in her hands in early 2018. She filed a workers' compensation claim on May 14, 2018, because of the pain.

9. Respondent Caguioa received treatment for her orthopedic conditions from Amanda Devencenzi, P.A., and Victor Li, M.D. Respondent Caguioa was treated with medication and physical therapy. Respondent Caguioa was placed on modified duty with restrictions that included prohibitions against lifting more than 10 pounds, repetitive bending or stooping, forceful or repetitive work at or above shoulder level, forceful grasping of either hand, repetitive pushing or pulling, and working more than three days per week.

10. Respondent Caguioa underwent an electrodiagnostic study of her hands that showed she suffered from mild carpal tunnel syndrome. She has consistently complained of pain and numbness in her hands.

11. On May 22, 2019, orthopedic surgeon Ramon L. Jimenez, M.D., performed a qualified medical evaluation (QME) of respondent Caguioa. Dr. Jimenez opined that respondent Caguioa had reached maximum medical improvement regarding her orthopedic conditions. Dr. Jimenez opined that respondent Caguioa's disability was permanent. Dr. Jimenez stated respondent Caguioa should refrain from

pushing or pulling, repetitive grasping or gripping or torquing with her right upper extremity, and that she should not lift more than 10 pounds.

12. On April 8, 2021, Dr. Li prepared a physician's report on disability. In the report, Dr. Li diagnosed respondent Caguioa with carpal tunnel syndrome in both wrists and lateral epicondylitis in both elbows. Dr. Li stated respondent Caguioa was substantially incapacitated from performance of her usual duties and that the incapacity was permanent. Dr. Li stated that respondent Caguioa was precluded from lifting more than 10 pounds, working more than three days per week, forceful and repetitive work at or above the shoulder, and working without an assistant.

13. Orthopedic surgeon Don T. Williams, M.D., wrote several independent medical evaluation (IME) reports regarding respondent Caguioa's orthopedic conditions at the request of CalPERS.

(a) On June 23, 2021, Dr. Williams performed an evaluation of respondent Caguioa. Dr. Williams opined that respondent Caguioa was not substantially incapacitated for the performance of her job duties. Dr. Williams noted the permanent restrictions that had been placed on respondent Caguioa but stated that her job allows a "variety of activity which allows changing positions, stretches to reduce any potential for nerve compression."²

² For this examination, Dr. Williams relied on the job duty statement and physical requirements for the position of Office Assistant III.

(b) On March 10, 2022, Dr. Williams prepared a supplemental IME report after reviewing the QME report prepared by Dr. Jimenez. Dr. Williams' opinion regarding respondent Caguioa's capacity to perform her job duties did not change.

(c) On April 7, 2022, Dr. Williams prepared a supplemental report after reviewing the job description and physical requirements for a Mailroom Clerk. Dr. Williams stated he would like to see a copy of the EMG/nerve conduction (EMG/NVC) study but stated no opinion on respondent Caguioa's capacity to perform her job duties.

(d) On April 20, 2022, Dr. Williams prepared a supplemental report after reviewing the EMG/NVC study and recent medical records. Dr. Williams noted that the study showed mild carpal tunnel syndrome but opined that respondent Caguioa was not substantially incapacitated for the performance of her job duties.

Respondent's Additional Evidence

14. Respondent Caguioa does not believe she is capable of performing her job duties due to the pain and numbness she still suffers in her hands and the restrictions that have been placed on her by her treating physicians. She is unable to repetitively grasp, or lift more than ten pounds. Respondent Caguioa described her difficulties in performing daily activities because of the pain and numbness in her hands.

More specifically, she described an incident where she fell on the stairs in her home. Respondent Caguioa was walking down the stairs holding a small box when she felt an "electric shock" in her hand and lost strength. She attempted to grab the box before it hit the stairs and fell bruising her face. Respondent Caguioa states she is unable to cook because after cutting or chopping for 5 minutes her hands have lost

strength and she is in pain. Respondent Caguioa is unable to visit her daughters because she is unable to grip the steering wheel for the two-hour drive.

15. Respondent stated as a Mailroom Clerk she is constantly lifting and tearing stamps off envelopes. She is unable to do many of the duties of her job as a Mailroom Clerk because of numbness and pain. She stated the numbness is creeping from the tips of her fingers and she is afraid she may lose feeling completely.

Determination of Substantial Incapacity

16. The medical evidence established that respondent Caguioa's bilateral hand conditions render her substantially incapacitated for the performance of her usual duties as a Mailroom Clerk. Dr. Williams acknowledged both that respondent suffers from carpal tunnel syndrome and that she has permanent work restrictions imposed by Drs. Li and Jimenez. Dr. Williams failed to address those permanent work restrictions, simply stating that the EMG/NVC study showed mild carpal tunnel syndrome and therefore concluding that respondent Caguioa is not substantially incapacitated.

Multiple medical providers have imposed permanent work restrictions on respondent Caguioa that are incompatible with her usual duties as a Mailroom Clerk. Dr. Jimenez opined that respondent's orthopedic conditions had reached maximum medical improvement in 2019. Dr. Li treated respondent Caguioa for months and opined that respondent Caguioa was substantially incapacitated for the performance of her job duties. The opinions of Drs. Li and Jimenez are more persuasive than that of Dr. Williams.

LEGAL CONCLUSIONS

1. The applicant for a benefit has the burden of proof to establish the right to the claimed benefit; the standard of proof is a preponderance of the evidence.

(*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051; Evid. Code, § 115.)

2. Government Code section 21150, subdivision (a), provides that a member of CalPERS who is incapacitated for the performance of duty shall be retired for disability, regardless of age or amount of service.

3. Government Code section 20026 provides that “disability” and “incapacity for performance of duty” as a basis of retirement “mean disability of permanent or extended duration . . . on the basis of competent medical opinion.” An individual is “incapacitated for the performance of duty” if she is substantially unable to perform her usual duties. (*Mansperger v. Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 876.)

4. It was established by competent medical opinion that respondent Caguioa’s orthopedic conditions (bilateral tendinitis, carpal tunnel syndrome, and nerve pain) have incapacitated her for the performance of her usual duties as a Mailroom Clerk, on a permanent basis or for an extended and uncertain duration. (Factual Finding 16.)

5. Respondent Veronica D. Caguioa is incapacitated for the performance of her duties as a mailroom clerk for the County of Monterey Sheriff’s Office within the meaning of Government Code 20026, by reason of her bilateral hand conditions.

ORDER

The appeal by Veronica D. Caguioa from the decision by CalPERS denying her disability application is granted.

DATE: 06/28/2022


TRACI C. BELMORE

Administrative Law Judge

Office of Administrative Hearings