



Appeals Committee

Item Number 3a – Open Session

Subject: Consideration of the Proposed Administrative Decision: In the Matter of the Retirement Benefits of: Kenneth Isenhart

Presenter(s): James Lindsay / Ian Coen

Item Type: Action

Date & Time: June 14, 2021 – 20 minutes

Attachment(s): Attachment 1 – Proposed Decision

Attachment 2 – Statement from Kenneth Isenhart

PowerPoint(s): None

PURPOSE

Administrative Law Judge (ALJ) Nana Chin received evidence at an administrative hearing by videoconference on March 2, 2021 and March 5, 2021 for the above-referenced matter. The record was held open for the parties to submit additional evidence and closing briefs, and the record closed on April 16, 2021. On May 17, 2021, ALJ Chin issued a Proposed Decision denying Mr. Isenhart's appeal of CalSTRS' determination that he was not eligible to receive disability retirement benefits (Attachment 1).

POSITIONS OF THE PARTIES

As further detailed in the submitted written statement, Mr. Isenhart contends that the Appeals Committee should reject the Proposed Decision.

Staff recommends that the Appeals Committee adopt the Proposed Decision with the technical or other minor changes referenced below.

DISCUSSION

Mr. Isenhart became a CalSTRS member on November 15, 1998 and began employment as an automotive technology teacher at Bell Gardens High School in Montebello Unified School District in the 2004-2005 school year. On February 22, 2011, Mr. Isenhart injured his back when he fell down some stairs following an evening meeting at the school. He sought immediate medical

treatment through his medical insurance and was taken off work for approximately ten weeks. He initiated a workers' compensation claim in April 2011. Although Mr. Isenhart went back to work with restrictions, his back and leg pain continued, and he underwent back surgery in December 2012.

Following his back surgery, Mr. Isenhart was off work until he was placed on modified duty on June 13, 2013. He was then returned to full duty without restrictions on July 18, 2013. Certain work restrictions were later placed; however, Mr. Isenhart successfully worked throughout the 2013-2014 school year. He injured his foot at work shortly before the end of the school year but returned in a walking boot and finished the term. Mr. Isenhart resigned from his employment by letter dated September 3, 2014, effective August 18, 2014. On September 29, 2014, CalSTRS received his disability retirement application which requested a service retirement pending the disability retirement application evaluation.

In response to the disability retirement application, CalSTRS requested documentation substantiating the alleged disability as well as any request for reasonable accommodations. CalSTRS received considerable medical documentation relating to Mr. Isenhart's injury and treatment; however, no documentation established Mr. Isenhart's inability to perform his job duties at the time of his application. He had worked through the end of the 2013-2014 school year and then resigned from his employment. The certification of the principal at Bell Gardens High School indicated that Mr. Isenhart had been able to perform his job functions and had been provided various accommodations even though they had not been formally requested by Mr. Isenhart. CalSTRS issued a Decision letter denying Mr. Isenhart's disability retirement application and, following a request for executive review, a Determination letter again denying the application. Mr. Isenhart then requested an administrative hearing.

At the hearing, Mr. Isenhart submitted some of the medical documentation he produced during the application and administrative review process. He testified to his injuries and restrictions, but, even though he believed he could not perform his job duties, he acknowledged that he worked through the end of the 2013-2014 school year. He also had significant personal difficulties with his employer not specifically related to his physical condition and acknowledged resigning but testified that he felt forced to resign. He testified that, despite his physical condition, he would have gone back to work at the beginning of the 2014-2015 school year and would even do so now if his former employer would allow him to return.

ALJ Chin found that none of the medical documentation submitted, other than a report by an Agreed Medical Examiner in the workers' compensation process, indicated Mr. Isenhart was unable to return to his usual duties. As to the report by the Agreed Medical Examiner which provided work restrictions, ALJ Chin found that they had been honored by his employer. ALJ Chin found there had been no request for reasonable accommodation by Mr. Isenhart of his employer as statutorily required.

ALJ Chin ruled that Mr. Isenhart had the burden of proof to establish his right to disability benefits by a preponderance of the evidence, and that he failed to establish his right to a disability benefit

and sustained each of the three causes for denial asserted by CalSTRS. First, ALJ Chin ruled that Mr. Isenhart failed to establish that he met the definition of “disabled” under Education Code section 22126 because the evidence did not support the conclusion that he was unable to perform his duties as an automotive technology teacher. Second, ALJ Chin ruled that Mr. Isenhart failed to establish that he had requested a reasonable accommodation as required under Education Code section 24103. Third, ALJ Chin ruled that Mr. Isenhart failed to provide the necessary documentation that would establish his right to a disability benefit as required under Education Code sections 22450 and 24103. Accordingly, ALJ Chin denied Mr. Isenhart’s appeal.

WRITTEN STATEMENT FROM MEMBER

Mr. Isenhart submitted a written statement in response to the Proposed Decision that asserts his inability to perform his duties and requests that his appeal be granted (Attachment 2). Mr. Isenhart’s statement does not change staff’s recommendation that the committee adopt the Proposed Decision with the technical or other minor changes referenced below.

RECOMMENDATIONS

Staff recommends that the Appeals Committee adopt the Proposed Decision with the following technical or other minor changes:

1. On page 3, line 3, change “CalSTRS” to “CalSTRS’.”
2. On page 8, paragraph 9C, line 4, change “participate” to “had not participated.”
3. On page 8, paragraph 10, line 1, change “decision” to “Determination.”
4. On page 9, paragraph 13, line 2, change “2004/2005” to “2004-2005.”
5. On page 13, paragraph 28, line 2, change “from 2014 until 2015” to “the 2013-2014 school year.”

MAY 18 2021

PM 045130

**BEFORE THE
TEACHERS' RETIREMENT BOARD
STATE OF CALIFORNIA**

In the Matter of the Retirement Benefits of:

KENNETH ISENHART, Respondent

Agency Case No. STRS20160010 (Statement of Issues)

OAH No. 2020070363

PROPOSED DECISION

Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 2 and 5, 2021.

Ian A. Rambarran, Esq., Klinedinst PC, represented the California State Teachers' Retirement System (CalSTRS).

Respondent Kenneth Isenhart appeared and represented himself.

Testimony and documents were received into evidence. The ALJ held the record open until April 9, 2021, for the following: (1) medical records that had been requested by respondent but had not yet been received by the time of the hearing; (2) a declaration regarding CalSTRS Exhibit 21; (3) a legible copy of Exhibit 23; and (4) closing argument by parties.

On March 17, 2021, respondent submitted an exhibit list and multiple documents, which were identified as Exhibits F through O. Respondent's exhibits A through I were marked and the hearing. The March 17, 2021 exhibit list submitted by respondent did not properly identify those exhibits. In order to eliminate confusion, the exhibit list was not marked. The documents that were identified by respondent as Exhibits F through O were marked as Exhibits FF through OO. These exhibits were disposed of as follows: (1) Exhibits FF, HH, II, LL, MM, NN, and OO are all medical records and were admitted into evidence as administrative hearsay; (2) Exhibits GG and KK explain and/or support respondent's hearing testimony and were admitted into evidence as administrative hearsay; and (3) JJ was deemed both irrelevant to the current proceedings and outside the March 5, 2021 order and was not admitted into evidence.

Complainant timely submitted the declaration, a legible copy of Exhibit 23, and a letter from respondent's former attorneys dated October 10, 2014. The declaration was attached to what was previously marked as Exhibit 21 and admitted into evidence. The legible copy of Exhibit 23 is substituted for the previously marked Exhibit 23 and admitted into evidence. The letter, which was marked as Exhibit 31, was not admitted into evidence as the letter was outside the March 5, 2021, order and, according to the proof of service, was not served on respondent.

On March 22, 2021, respondent submitted a letter as his closing argument. The letter was marked for identification as Exhibit PP and lodged as argument.

On April 7, 2021, CalSTRS requested that a ruling be issued on the documents submitted by the parties and that the parties be allowed to submit their closing briefs one week after such ruling, or by April 16, 2021.

CalSTRS' request was granted. A ruling was issued, and CalSTRS was provided until April 16, 2021, to submit written closing argument.

On April 8, 2021, respondent submitted a letter responding to CalSTRS objection. The letter was marked as Exhibit QQ.

On April 16, 2021, CalSTRS submitted its closing argument, which was marked as Exhibit 32, and lodged as argument.

The record was closed, and the matter was submitted for decision on April 16, 2021.

FACTUAL FINDINGS

Jurisdiction and Procedural Background

1. The California State Teachers' Retirement Plan is administered by the Teachers' Retirement Board (the Board) (Ed. Code, § 22001.5.)
2. Respondent is a retired CalSTRS member who was employed by the Montebello Unified School District (District), an employing agency for which creditable service is performed subject to coverage by CalSTRS. Respondent resigned from the District by letter dated September 3, 2014, effective August 18, 2014.
3. On September 29, 2014, CalSTRS received respondent's Disability Benefits Application (application) in which he requested service retirement pending an evaluation of his application. He wrote that his specific diagnosis/impairment was "impairment of lower back and knees with bathroom problems, diabetes and depression" (claimed impairments). (Exhibit 7, CalSTRS 0037.)

4. By letter dated October 10, 2014, CalSTRS requested that respondent submit several documents, including, medical records from all treating physicians from August 2013 to the present, and documentation of respondent's request for a reasonable accommodation.

5. Respondent, through his attorneys, submitted several documents in response to the CalSTRS request. CalSTRS reviewed the submitted documentation and, in a letter dated November 20, 2014, noted that the supplied documents were insufficient to support respondent's request for disability retirement. Specifically, the medical documentation regarding respondent's lower back and legs indicated that respondent had been returned to full work duty by his treating physician [Khyber Zaffarkhan, D.O.] without restrictions on August 13, 2013, and the medical documentation of respondent's other claimed impairments did not indicate that they would prevent respondent from working. The letter also noted that respondent's application stated that he had not requested a reasonable accommodation¹ and none of the submitted documentation indicated that one was subsequently requested. In the letter, CalSTRS advised that the Education Code required respondent to work with his doctor and his employer to determine whether he could continue to work with a reasonable accommodation. CalSTRS advised respondent he must begin the process by first contacting his doctor to discuss reasonable accommodations and then contacting his employer to begin the interactive process of requesting an

¹ This appears to be in error as Section 3.2 of respondent's application indicates that he had requested an accommodation. (Exh. 7, CalSTRS 0037.)

accommodation. CalSTRS requested respondent supply these documents by December 5, 2014.

6. When CalSTRS did not receive the requested documents, CalSTRS sent a second follow-up letter, again noting the documents that had been submitted did not support respondent's request for disability retirement in that none of the submitted medical documentation indicated respondent's claimed impairments prevented respondent from working and there was no documentation that respondent had begun the reasonable accommodation process.

7A. In a letter dated April 15, 2015 (Rejection Letter), Barbara Leek, Disability Manager, informed respondent through his attorney that his application was denied. The notice stated that, after review of the documents respondent submitted, CalSTRS was rejecting respondent's application for disability benefits for the following reasons: (1) failure to supply medical documentation substantiating impairments that qualify him for a disability benefit; (2) failure to participate or complete the reasonable accommodation process; (3) failure to meet the CalSTRS definition of disability under Education Code section 22126; and (4) failure to submit documentation requested by CalSTRS.

B. The letter noted that the medical documentation respondent presented reflected the following:

i. Dr. Zaffarkhan returned respondent to full duty on August 13, 2013.

ii. When respondent visited Dr. Zaffarkhan on November 19, 2013, respondent reported that he was able to perform his usual work duties and had resumed full duty.

iii. After respondent requested Dr. Zaffarkhan place him off work on May 1, 2014. Dr. Zaffarkhan informed respondent that his May 18, 2014 qualified medical evaluator (QME) would determine his disability status.

iv. CalSTRS was not provided a copy of the QME report with respondent's disability status.

v. On June 16, 2014, respondent was given work restrictions.

vi. On July 3, 2014, respondent was again returned to full duty.

vii. On December 10, 2014, CalSTRS received a report from Wayne Walburn, D.C., stating respondent was unable to work. CalSTRS noted that "a Chiropractor is not a medical doctor and therefore his report is not considered competent medical documentation." (Exh. 9, CalSTRS 0053.)

C. The letter also noted that though respondent had been given work restrictions on June 16, 2014, CalSTRS had not received any reasonable accommodation documentation.

D. CalSTRS further advised that respondent's medical documentation did not indicate he had been prevented from "working his usual duties, duties with accommodations or the duties of a comparable level." (Exh. 9. CalSTRS 0053.)

8. By letter dated May 28, 2015, respondent asked for an executive review of the application denial, stating that "[u]pon review of the Rejection Letter it is clear that not all the necessary documentation and information was provided to CalSTRS." (Exh. 10, CalSTRS 0062.) Along with his appeal, respondent stated he was providing CalSTRS with "all [his] medical records . . . related to his industrial fall and foot injury as many were not provided previously and entirely." (*Id.*, CalSTRS 0062-63.) Respondent

also stated that he "participated in all reasonable accommodation processes provided by employer" but that his employer had been "hostile and uncooperative during this entire process." (*Id.*, CalSTRS 0063) He further noted that it was a "unfair and unreasonable burden" to provide the requested documentation. (*Ibid.*)

9A. Andrew Roth, CalSTRS Benefits & Services Executive Officer, conducted the executive review and determined CalSTRS had appropriately rejected respondent's application. In a letter dated August 9, 2016, Mr. Roth advised respondent of the determination and outlined the facts and laws he considered in reaching that conclusion.

B. Mr. Roth reviewed the medical records submitted and noted the following:

i. The medical documentation respondent presented reflected that he underwent lumbar surgery on December 26, 2012, was returned to work with restrictions on June 13, 2013, and then returned to full duty without restrictions by July 18, 2013. Mr. Roth further noted that there was no indication from the submitted documentation that respondent was prevented by his impairments from performing his duties without accommodation.

ii. It was also noted that the documentation respondent provided from Chiropractor Walburn was contradictory. Specifically, even though Chiropractor Walburn claimed on December 10, 2014, that respondent's impairments were "severe enough that . . . [he] should be considered for State disability ASAP," Chiropractor Walburn's treatment note from December 24, 2014, indicated that the severity of respondent's impairments was "slight." (Exh. 13, CalSTRS 0087.)

iii. The medical report from orthopedic spine specialist, Gerald Alexander, M.D. dated February 10, 2015, stated that respondent was not prevented from working with restrictions, reflecting that respondent had not been continuously incapacitated for at least 12 months from the onset of the impairment.

iv. Mr. Roth noted that the report from the agreed medical evaluator (AME), Laura Wertheimer Hatch, M.D., dated May 18, 2015, indicated that respondent could not return to his customary job duties as an automotive instructor due to his lumbar spine condition. However, Mr. Roth explained that he did not credit her conclusion as AME Hatch believed that respondent's duties would require him to lift 100 to 150 pounds unassisted, which contradicted the District's job duty statement regarding what his job entailed. Mr. Roth further noted that Dr. Hatch did not consider whether respondent could work with accommodation.

C. Mr. Roth also noted that though respondent claimed, in his request for an Executive Review, to have engaged in reasonable accommodation discussions with the District, Juan Herrera, the principal at Bell Gardens denied he had done so. Principal Herrera noted that even though respondent participate in the standard accommodation process, the school provided respondent with accommodations, which included the use of a golf cart, a more convenient parking space, and the use of a special chair. Mr. Roth also noted that the documentation respondent provided did not indicate that "[he] attempted to bring [his] work restrictions to [his] employer when [he] stopped working." (Exh, 13, CalSTRS 0087.)

10. Respondent requested a hearing to review CalSTRS' decision.

11. On December 3, 2018, Mr. Roth signed the Statement of Issues in his official capacity, seeking to deny respondent's disability application in that: (1) respondent does not meet the definition of "disability" or "disabled" as defined by Education Code section 22126; (2) respondent failed to provide any evidence of his efforts to return to work with the District with a reasonable accommodation; and (3) respondent failed to provide requested documentation substantiating his impairment.

12. Respondent filed a notice of defense and this hearing ensued.

Respondent's Employment History

13. Respondent began working as an Automotive Technology teacher at Bell Gardens High School (Bell Gardens), which is within the District, in the 2004/2005 school year.

14. The Certification by Principal states that, in this role, respondent worked seven and a half hours a day starting at 7:30 a.m. Respondent's core duties were to "[d]evelope [*sic*] lessons that include instruction and assessments of student performance." (Exh. 8. CalSTRS 0049.) During that time, he would be lifting items 5% of the time, walking 10% of the time, standing 40% of the time, and sitting 45% of the time.

15. On September 3, 2014, respondent resigned from his position at Bell Gardens effective August 18, 2014. (Exh. 9, CalSTRS 0094.) In a second September 3, 2014 letter, respondent advised Jill E. Rojas, District Assistant Superintendent, Human Resources that he would not be able to return to work for the school year, stating his doctors did not believe he would be able to return to work, with or without reasonable accommodations. (Exh. GG.)

Orthopedic Treatment History

16. On February 22, 2011, respondent was injured at Bell Gardens when he fell down some stairs following an evening school meeting. According to respondent, he had immediate total body pain and was unable to get up for a significant period of time. Respondent reported the injury the following morning and took the day off.

17. Respondent was subsequently taken off of work for approximately 10 weeks.² Initially, respondent sought treatment for his injuries through his private health insurance and went to his primary care physician, Ana Hernandez-Schneider, M.D. Respondent also had diagnostic tests performed and received consultations from L. Gibson, M.D., an orthopedist, and Dr. Zaffarkhan, a pain management specialist, both of whom recommended respondent undergo physical therapy and epidural injections for his injuries.

18. Bell Gardens provided respondent with the following accommodations, "use of a golf cart in lieu of walking. Specialized chair, special parking to be close to his classroom. Refrigerator/microwave for use in his office area." (Exh. 8, CalSTRS 0050.)

19. In April 2011, due to his mounting medical bills, respondent elected to file a workers' compensation claim.

20. On November 9, 2011, respondent was seen by Hose Kim, M.D. for an initial orthopedic consultation. Dr. Kim released respondent to modified work with the following restrictions: (1) no pushing/pulling over 15 pounds, (2) no lifting over 15

² The record did not make clear which physician took respondent off of work and what period of time he was taken off of work.

pounds, (3) no repetitive bending/stopping, (4) may change position at will, and (5) no more than 20 minutes of continuous walking.

21. Respondent reported to AME Hatch that he saw Dr. Kim for a few follow-up visits but returned to receive treatment from Dr. Zaffarkhan when he received authorization from the workers' compensation carrier to do so because his treatment with Dr. Kim was not helping.

22. On May 2012, Respondent was again returned to modified duty, which included no standing, walking, or sitting greater than 15 minutes, no lifting greater than 20 pounds, and a break after one hour of work.³ Respondent reported to AME Hatch that Bell Gardens honored these restrictions.

23. On August 24, 2012, respondent was returned to modified work by Fulton Orthopedic Surgery with "no repetitive bending, squatting, stooping, sit down job, no lifting greater than 10 pounds, and stands [sic] as needed for two months." (Exh. 26, CalSTRS 0355.)

24. On December 21, 2012,⁴ respondent underwent back surgery. Gerald Alexander, M.D., the surgeon who performed the procedure, placed respondent on temporary total disability (TTD). On March 28, 2013, when Dr. Alexander noted that

³ The record was unclear as to whether respondent had been taken off of work and who returned respondent to modified duty.

⁴ The medical reports were somewhat unclear in that they alternatively report the surgery as having occurred on December 20, 2002, December 21, 2011, December 20, 2012, and December 26, 2012.

respondent had no ongoing surgical issues, respondent was released back into Dr. Zaffarkhan's care.

25. Respondent reported to several of his medical evaluators that on an unspecified date in 2013, he sought treatment at the emergency room at Anaheim Memorial Hospital ER when he went blind. After he was treated with an insulin injection, respondent reported that his vision came back. Respondent did not submit any documentation of this visit or any evidence he was placed off of work due to this incident.

26. On June 13, 2013, Dr. Zaffarkhan released respondent to modified duty with the following restrictions: no sitting, walking, or standing greater than 15 minutes, and no lifting greater than 25 pounds.

27. In a letter dated July 3, 2013, respondent, through his attorneys, advised the District that he would like to work during the summer as a substitute. Respondent provided the District with a release to return to work form from his doctor with a few restrictions, which respondent asserted could be self-accommodated. The letter further states respondent "is not in need of any meeting concerning any reasonable accommodation and he is not requesting any formal reasonable accommodation at this time." (Exh. KK.)

28. Dr. Zaffarkhan saw respondent again on August 13, 2013, regarding complaints to his low back and bilateral extremities. At that time, Dr. Zaffarkhan noted respondent was "full duty" and that respondent's attorney would continue to

communicate that fact to the District.⁵ (Exh. 20, CalSTRS 0115.) Following his release, respondent worked from 2014 until 2015 for the District.

29. On November 19, 2013, Dr. Zaffarkhan issued a permanent and stationary report, which reflected that respondent was returned to full duty.

30. On May 19, 2014, David Amory, M.D., a qualified medical evaluator (QME), performed an orthopedic evaluation. At that time, QME Amory noted that the determination of respondent's work status was "difficult" as respondent was "anxious to work and has been released back to work without restriction." (Exh. 25, CalSTRS 0347.) Dr. Amory, however, noted that as respondent was symptomatic and prone to injury due to his persistent symptoms and poorly controlled diabetes, it is reasonable to allow him to work with a 25-pound lifting restriction and limited bending, twisting, and lifting.

31. In June 2014, respondent suffered a second industrial injury. Respondent reported to AME Hatch that, as a result of his back injury, respondent had foot drop and that, while walking between two classes, he tripped over his foot. He reported the injury to the school principal and was sent to U.S. HealthWorks. He was released to modified duty, including limited standing and walking, which his employer honored.

⁵ After Dr. Zaffarkhan returning respondent to full duty on August 13, 2013, Dr. Zaffarkhan modified that recommendation on August 25, 2013, by returning respondent to modified duty. (Exh. 25, CalSTRS 0344.)

32. Respondent was seen three additional times before he was released by U.S. HealthWorks on July 3, 2014, to full duty with no limitations or restrictions. (Exh. LL.)

33. Respondent reported to AME Hatch that following his June 2014 injury, he did not feel he could continue to work his usual and customary duties and continued to seek treatment. On September 5, 2014, respondent was seen by Billie Park, M.D. at St. Joseph Heritage Healthcare (St. Joseph). At that time, respondent was diagnosed with several issues, including a closed fracture of the sesamoid bone of the left foot with delayed healing.

34. Respondent was then seen by a podiatrist, Richard Grenier, DPM, at St. Joseph on October 1, 2014, and November 25, 2014.

35. On May 18, 2015, respondent was seen by AME Hatch for an agreed orthopedic medical examination. Following the examination, AME Hatch determined that, as a result of his lumbar spine condition, respondent was precluded from heavy work or prolonged sitting and respondent therefore could not return to his usual and customary duties.

36. On July 2, 2015, respondent underwent left foot surgery, performed by Dr. Grenier. Following the procedure, respondent continued to treat with Dr. Grenier until September or October 2015. There was no evidence of whether Dr. Grenier had made any recommendation as to whether respondent could return to his work duties on either a full or modified basis.

37. On June 1, 2016, AME Hatch determined that as a result of respondent's left foot condition, respondent was precluded from prolonged weight-bearing, repetitive kneeling and squatting, prolonged stair climbing, and very heavy lifting.

AME Hatch also concluded respondent could not return to his usual and customary duties due to a combination of his low back and left foot conditions.

Independent Medical Examination

38. At the request of CalSTRS, Juan A. Realyvasquez, M.D, who is a diplomate of the American Board of Orthopaedic Surgery, conducted an independent medical evaluation (IME) of respondent on March 26, 2018. IME Realyvasquez obtained pertinent medical history, performed a physical examination, and reviewed medical reports and respondent's job duties.

39. During the examination, respondent reported that his daily job duties required him to lift at least 25 to 50 pounds, "walk and stand to do lectures and to do meetings." (Exh. 26, CalSTRS 0352.) Respondent stated that he had to be able to stand for a period of time for giving lectures and be able to bend, stoop and squat in order to demonstrate automotive techniques on engines. IME Realyvasquez found that the x-rays and MRIs of respondent's lumbar spine, following his February 2011 injury, "show significant disc degeneration at L5-S1 that was causing bilateral foraminal stenosis." (Exh. 26, CalSTRS 0361.) IME Realyvasquez also noted that respondent had a seven-millimeter disc bulge pressing on epidural fat and obstructing the foramina of the exit of the nerves which caused respondent significant pain. Though respondent had undergone laminotomy and spinal fusion, the MRI of 2013 showed no evidence of union. Based on the foregoing, IME Realyvasquez posited that respondent could perform the duties of an Automotive Technology Specialist with some limitation and his condition was expected to last more than 12 months from June 19, 2014.

40. IME Realyvasquez also noted that respondent had two problems that needed acute attention: (1) respondent's diabetes needed to be placed control; and (2)

respondent had significant depression and other psychological problems that interfered with the care of his diabetes and the improvement of his lumbosacral pain. IME Realyvasquez strongly recommended that respondent undergo a psychological evaluation.

41. CalSTRS did not refer respondent to any additional medical examiners.

Internal Treatment History

42. Though there was medical evidence that respondent suffered from bathroom problems and diabetes, there was no evidence that respondent was ever placed off of work due to these conditions.

Evaluation

43. Respondent asserted at hearing that he is disabled and has not been able to return to his job duties as an automotive technology teacher. Respondent presented multiple medical documents, which show that respondent suffers from some level of impairment. These medical documents were either previously submitted to CalSTRS or are reflected in the medical reports reviewed by CalSTRS. None of the reports, however, other than the report by AME Hatch, indicate that respondent is unable to return to his duties. In addition, even though AME Hatch's report states that respondent could not return to his usual and customary duties, she does provide respondent with work restrictions that appear to comport with restrictions respondent had previously been provided by the District as part of his modified duties.

44. Respondent also testified to the significant conflicts he had with the administration at Bell Gardens, which ultimately led to his resignation. Despite these conflicts, however, respondent was required to request a reasonable accommodation

from the District. Respondent was notified of this requirement by CalSTRS in its letters of October 10, 2014, November 20, 2013, and December 10, 2014. Respondent, however, failed to present any evidence that he had requested such an accommodation.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. This proceeding is governed by the applicable provisions of the California Teachers' Retirement Law (Ed. Code, § 22000 et seq.) The hearing must be conducted in accordance with administrative hearing procedures set forth in the Administrative Procedure Act (Gov. Code, § 11500 et seq.). (Ed. Code, § 22219, subd. (b).)

2. As an applicant for retirement benefits, respondent has the burden of proof to establish a right to the entitlement of such benefits. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051 & fn. 5; *Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 691.) Evidence Code section 115 states that, except as otherwise provided by law, the burden in a matter such as this requires proof by a preponderance of the evidence. Thus, respondent has the burden of establishing by a preponderance of the evidence that he is eligible for disability retirement benefits.

First Cause for Denial

3. The word "disability" for purposes of determining eligibility for a disability allowance means a physical or mental impairment "that is permanent or that can be expected to last continuously for at least 12 months, measured from the onset of the disability, but no earlier than the day following the last day of actual

performance of service that prevents a member from performing the member's usual duties" with or without "reasonable modifications." (Ed. Code, § 22126.)

4. A person is disabled under this statutory definition "if the person is unable to perform his or her regular duties or comparable duties [with] reasonable accommodation and that inability is permanent or expected to last at least a year from the date of onset." (*Duarte v. State Teachers' Retirement System* (2014) 232 Cal.App.4th 370, 385 (*Duarte*), quoting, *Welch v. State Teachers' Retirement System* (2012) 203 Cal.App.4th 1, 11.) The burden is on the member to "provide medical documentation to substantiate the impairment qualifying the member for the disability allowance" when applying to CalSTRS for a disability allowance. (Ed. Code, § 24003, subd. (a).)

5. In this case, the evidence failed to establish that respondent was not able to perform his usual and customary duties as an automotive technology teacher with accommodations for his orthopedic injuries to his lower back and knees. Each of respondent's treating physicians indicated he could return to work either with or, in some cases, without restrictions. Though both AME Hatch and IME Realyvasquez indicated respondent could not return to his usual and customary duties as an automobile technology instructor, both indicated that respondent could return to work with a reasonable accommodation.

6. Respondent has not established by a preponderance of evidence that he is disabled. Cause therefore exists to deny respondent's application for disability benefits for his failure to meet the requirements of Education Code section 22126.

Second Cause for Denial

7. If CalSTRS determines that the member may continue to perform his or her job with the assistance of a reasonable accommodation, respondent may be required "to request reasonable accommodation from the employer. Failure of the member to request reasonable accommodation, as directed by the board, may be grounds for cancellation of the disability allowance application." (Ed. Code, § 24103, subd. (d).)

8. In this case, CalSTRS requested evidence of respondent's efforts to obtain a reasonable accommodation from the District as part of respondent's application, in letters dated October 10, 2014, November 20, 2014, and December 2014, noting that, to begin the process, respondent would need to contact his doctor and then his employer. Respondent failed to present any evidence of his efforts to begin that process.

9. Respondent has not established by a preponderance of evidence that he requested reasonable accommodation from his employer. Cause therefore exists for CalSTRS to deny respondent's application for disability retirement benefits pursuant to Education Code section 24103, subdivision (d).

Third Cause for Denial

10. For purposes of its disability program, CalSTRS is required to determine whether a member is disabled within the meaning of the Education Code. (*Duarte, supra*, 232 Cal.App.4th at p. 386.) To that end, a member "must comply with the documentation requirements set forth in [Education Code] sections 22450 and 24103." (*Id.* at p. 387.)

11. Education Code section 24103, subdivision (a), requires that the member "provide medical documentation substantiating the impairment qualifying the member for disability retirement." Education Code section 22450, subdivision (a), requires a member to furnish any information, including employment, legal and medical documentation, affecting his or her status as a member or beneficiary of the Defined Benefit Program.

12. CalSTRS made repeated requests to respondent for documentation to show respondent had been prevented from working his usual duties and he had begun the reasonable accommodation process. Although respondent provided multiple medical documents, none of these documents indicated respondent could not work his job duties with accommodations or that respondent had requested a reasonable accommodation from District.

13. Respondent has not established by a preponderance of evidence that he provided the requested medical documentation to substantiate his alleged disabilities. Cause therefore exists to deny respondent's application for disability benefits pursuant to Education Code sections 24103 and 22450.

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MAY 18 2021

ORDER

Respondent Kenneth Isenhardt's appeal is denied.

MAY 17 2021

DATE: May 17, 2021


Nana Chin (May 17, 2021 11:59 PDT)

NANA CHIN

Administrative Law Judge

Office of Administrative Hearings

I have been trying to prove to you that I qualify for disability retirement. My injuries that I received on the job are so severe that no school district nor my own school district will hire me they feel I am a huge liability this will not change for the rest of my life I am not been able to work in my field since June 2014 .US medical the urgent care facility that I was sent to for my foot only to be misdiagnosed return me to work at 100% your people took it as a whole body hundred percent and didn't take in consideration that I had to have major surgery on that foot because they misdiagnosed it Causing a permanent disability and instability in balance and walking. My back surgeon when he installed a hardware the PDL screws or lag bolts were too long and they stuck through my vertebrae and into my body. Now calcified over they present themselves as bone spurs and scar tissue into the back of my Intestines nerves and blood vessels if Cal STRS doctor had those records he would've commented about it? Also if he had the documents of my foot disability ! As I said before he was never given those records nor was he given anything from Workers Comp he repeated what I had told him the one Workers Comp doctor said about my wife and as I told him it was not true but he forgot and put it in his report as a true statement .I work for the school district under modified conditions and accommodations for over a year and a half until they refuse to allow me to come back to work stating that I was unsafe to myself and unsafe to the people around me,they were not going to take responsibility for my physical safety.Dr Zafercan was my pain management doctor he work with me until the surgery then after the surgery he refused to see me until the QME report was back .because it is Workers Comp and he did not handle Workers Comp Cases. He closed his office is in Fullerton according to his medical staff now,in 2012 I never had any contact with him after he left Fullerton offices. I do not think those papers stating I can go back to full duty from him are real and one paper from him stating I could have modified duty after he put me back to full duty does not make any sense there is no treatment notes no pain pills issued nothing just two sheets of paper contradicting themselves. The judge took all my authentic court documents and county documents ,authentic work comp documents and ruled it all administrative hearsay therefore it was not used in consideration she even was confused about the date of my surgery which was clearly marked on the paperwork she seem to only take the exhibits that were cut and pasted by CalSTRS classical staff as evidence or exhibits. Cal strs clerical staff has no medical expertise they only look for phrases ,sentences and paragraphs that fit the narrative that they need to use. The judge and CalSTRS both said that dates were reset and that reports were re-issued! proving when I say that it was falsified documents. If the board would have a qualified medical expert look at all the documentation the MRIs the CAT scans and the x-rays and then really find out what a good auto shop instructor Has to move and lift and demonstrate then they would understand fully why I am not able to do my job from my first injury and my other injuries just add on! Now the state of Arizona the state of California the state of California Workers Comp and Social Security disability insurance , all state that I am disabled and not able to do my job and never will again on my own. I never would've resigned my tenure position !!! I was forced to by my teachers union and district. If the documents to prove it weren't administered as hearsay she (The judge)could have seen that. The judge thought that the doctor reports started out the same and because they look similar were copies of each other . But Calstrs documents were cut and pasted and altered.My Documents weren't ,mine were straight from the doctors that I could get it from. It wasn't all Calstrs that sent incomplete documents my attorney from the union did that and then told me because I didn't give them

complete documents there's nothing they could ? Even though they had complete medical releases and access to all my doctors ! They took my money and threw me under the bus.

Thank You
Kenneth Isenhardt