

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Linda Oliver,)	
)	FINAL ORDER AND DECISION
Petitioner,)	
vs.)	DOCKET NO. 04-ALJ-30-0136-CC
)	
South Carolina Budget and Control Board,)	
South Carolina Retirement Systems,)	
)	
Respondent.)	

APPEARANCES:	Chad L. Bacon, Esquire For Petitioner
	Kelly H. Rainsford, Esquire For Respondent

STATEMENT OF THE CASE

The above-captioned case is before this tribunal pursuant to S.C. Code Ann. § 9-21-60 (Supp. 2003) for a contested case hearing. Petitioner Linda Oliver seeks review of Respondent South Carolina Retirement Systems' (SCRS) Final Agency Determination of March 18, 2004, which denied her application for disability retirement benefits under S.C. Code Ann. § 9-1-1540 (Supp. 2003). Petitioner contends that she suffers from certain physical limitations and chronic pain as a result of a broken hip she suffered in 2002 and a degenerative disc disease in her lower back; that these physical impairments have permanently, physically incapacitated her from the further performance of her job as a Vocational Rehabilitation Specialist with the South Carolina Department of Vocational Rehabilitation; and that, because of this incapacitation, she is entitled to disability retirement benefits from the South Carolina Retirement System. While SCRS recognizes that Petitioner may have some physical impairments as a result of her broken hip and back pain, it further contends that any such impairments do not prevent her from performing her previous job duties at the Department of Vocational Rehabilitation, and thus do not entitle her to disability retirement benefits under Section 9-1-1540.

After timely notice to the parties, a hearing of this matter was held on August 25, 2004, at

the Administrative Law Court in Columbia, South Carolina. Based upon the evidence presented at that hearing and upon the applicable law, I find that SCRS properly denied Petitioner's application for disability retirement benefits under Section 9-1-1540.

FINDINGS OF FACT

Having carefully considered all testimony, exhibits, and arguments presented at the hearing of this case, and taking into account the credibility and accuracy of the evidence, I make the following Findings of Fact by a preponderance of the evidence:

Procedural Background

1. Petitioner is a fifty-four-year-old woman who was employed for twelve years in a full-time, clerical position as a Vocational Rehabilitation Service Specialist with the South Carolina Department of Vocational Rehabilitation in Oconee County, South Carolina. Petitioner started her employment with the Department of Vocational Rehabilitation on August 17, 1990, and worked there until she fell and broke her hip on the job on October 30, 2002. Petitioner did not return to work after rehabilitating her injury and was terminated from her employment with the Department on May 2, 2003.

2. On April 29, 2003, Petitioner filed an application for disability retirement benefits with SCRS, in which she contends that physical impairments caused by her broken hip and a degenerative disc disease permanently prevent her from performing her prior job duties with the Department of Vocational Rehabilitation. After receiving the application, SCRS sent Petitioner's file to the Department of Vocational Rehabilitation for review of her claims.¹ Disability Examiner Matt Woolsey reviewed the medical documents regarding Petitioner's condition, and, on August 13, 2003, issued a recommendation to the SCRS Medical Board that Petitioner's disability retirement application be denied. On August 26, 2003, the Medical Board accepted the Disability Examiner's recommendation and denied Petitioner's claim for disability retirement benefits.

¹ Pursuant to Section 9-1-1540, SCRS is authorized to, and does, contract with the Department of Vocational Rehabilitation "to evaluate the medical evidence submitted with . . . disability application[s] relative to the job being performed and [to] make recommendations to the medical board." S.C. Code Ann. § 9-1-1540 (Supp. 2003). In the case at hand, it is only a coincidence that Petitioner was an employee of the Department of Vocational Rehabilitation.

3. Petitioner requested a reconsideration of the Board's decision, and her file was sent to a second Disability Examiner at the Department of Vocational Rehabilitation. After reviewing the medical documentation of Petitioner's condition, including new documentation not considered by the first examiner, the second Disability Examiner, Martha L. Spangler, also recommended that Petitioner's disability claim be denied, because Petitioner's "residual functional capacity does give her the ability to continue her usual work activities." Resp't Ex. #1, at 19. Based upon this second recommendation, the Medical Board again denied Petitioner's application for disability retirement benefits on December 9, 2003.

4. Petitioner then requested administrative review of her claim before the Director of SCRS, Peggy Boykin. Ms. Boykin appointed Robert E. Brabham, Ph.D., an independent vocational rehabilitation consultant, to review Petitioner's claim. In reviewing Petitioner's case, Dr. Brabham conducted an administrative conference on March 3, 2004, at which Petitioner and her counsel were present, and considered the entire file concerning Petitioner's claim, including all documents obtained by the disability examiners and all documents submitted by Petitioner's counsel. On March 17, 2004, Dr. Brabham issued a report, in which he concluded that Petitioner's "medical records generally support the reasonable conclusion that she retains the ability to perform the levels of activity required in her job," Resp't Ex. #1, at 41, and recommended that "the Medical Review Board's previous decision to deny South Carolina State Retirement System benefits should be upheld." Resp't Ex. #1, at 42. Based upon Dr. Brabham's report, Ms. Boykin issued a Final Agency Determination denying Petitioner's application for disability retirement benefits from SCRS on March 18, 2004. Petitioner now seeks review of that determination before this tribunal.

Petitioner's Medical Conditions

5. On October 30, 2002, Petitioner fell at work, breaking her right hip. As a result of the injury, Petitioner underwent right hip bipolar hemiarthroplasty (i.e., a partial hip replacement surgery) on October 31, 2002, at Oconee Memorial Hospital. After being discharged from the hospital on November 4, 2002, Petitioner first received in-home physical therapy through Interim HealthCare until December 19, 2002, and subsequently visited the Clemson Sports Medicine and Rehabilitation clinic in Seneca, South Carolina, between

December 23, 2002, and August 26, 2003, for physical therapy. At the time she began her physical therapy, Petitioner had considerable physical limitations, was dependant upon a walker for mobility, and suffered intermittent, moderate pain in her hip. Resp't Ex. #1, at 359, 363. However, by the time she stopped receiving therapy because she had exhausted her workers' compensation benefits, Petitioner was able to perform the physical tasks of her daily life, no longer had any significant pain in her hip, and could walk with a smooth gait without the use of a cane. Resp't Ex. #1, at 100, 113. Moreover, Petitioner was informed by her physical therapists that, with only a few more therapy sessions using the techniques used in her final two treatments, she could alleviate the pain in her hip in the long-term; nevertheless, because of financial reasons, Petitioner did not continue her physical therapy with the Clemson Sports Medicine and Rehabilitation clinic after the termination of her workers' compensation benefits. Around this same time, Petitioner's physician concluded that, although Petitioner had a "well-preserved range of motion" in her right leg, she had likely suffered a permanent 20% impairment to the leg. Resp't Ex. #1, at 224, 225.

6. During the course of her physical therapy, Petitioner also complained of pain in her lower back in addition to the pain in her surgically repaired hip. In response to these complaints, Petitioner's doctor ordered an MRI of her lumber spine, and, based upon the results of the MRI, diagnosed her with degenerative disc disease at the L5-S1 vertebrae. As a result of this diagnosis, Petitioner received occasional epidural steroid injections from her physician and her physical therapist incorporated exercises to relieve lower back pain into her treatments. As with her hip pain, Petitioner's lower back pain had, through her treatment with steroids and her physical therapy, subsided to a significant degree, and showed promise of being further alleviated in the long-term with further therapy, at the time she discontinued her physical therapy at the Clemson Sports Medicine and Rehabilitation clinic because of the exhaustion of her workers' compensation benefits. Resp't Ex. #1, at 100, 113. Despite the progress made by Petitioner in her physical therapy, her physician concluded in July 2003 that she "will more than likely have chronic mechanical low back pain." Resp't Ex. #1, at 225.

7. As a result of the injury to her right hip and the degenerative disc disease in her lower back, Petitioner is limited in her physical activities. Because of the nagging pain caused

by her conditions, Petitioner is unable to walk long distances, carry heavy objects, or perform moderate manual labor without taking frequent breaks to rest. Petitioner is also unable to bend, stoop, or lift heavy objects without experiencing pain, and she cannot comfortably stand or sit in one position for an extended amount of time. However, these physical limitations have not incapacitated Petitioner. She is able to perform light household chores and light yard work and to attend to the daily affairs of her life, such as going to the laundry mat and attending weekly church services. And, if given sufficient opportunities to stand and stretch, Petitioner is able to perform light, clerical office work that requires her to remain seated for much of the day. See Resp't Ex. #1, at 19 (disability determination by Martha Spangler upon reconsideration of SCRS's initial denial of Petitioner's claim); Resp't Ex. #1, at 39-42 (report of Dr. Brabham prepared for SCRS); Resp't Ex. #1, at 192-198 (Physical Residual Functional Capacity Assessment performed by Steven J. Fass, MD, for the Social Security Administration).

Petitioner's Job Duties

8. Prior to suffering her broken hip, Petitioner was employed with the Department of Vocational Rehabilitation as a Vocational Rehabilitation Service Specialist. In this capacity, Petitioner performed light, clerical office work as an accounting technician. This accounting work centered around processing certain business records such as inventory reports, bank reconciliations, payroll, tax documents, accounts receivable, and accounts payable. To perform these duties, Petitioner used standard office equipment, including a computer, fax machine, telephone, and copier. While Petitioner spent much of the day seated at her desk using a computer, she frequently left her desk to use other equipment, such as the copier or fax machine, to collect and deposit files, and to retrieve various office supplies. Petitioner's job duties did not require her to bend or lift with any frequency and did not require her to carry objects in excess of ten pounds. See Resp't Ex. #1, at 3 (job description provided by Petitioner's supervisor); Resp't Ex. #1, at 39-42 (report of Dr. Brabham). In sum, Petitioner's job duties at the Department of Vocational Rehabilitation consisted of the responsibilities and physical activities typical of light office work.

9. Therefore, while Petitioner does have some physical limitations due to her medical conditions, these limitations do not incapacitate her from the further performance of her

prior job duties with the Department of Vocational Rehabilitation.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

1. This tribunal has jurisdiction over this matter pursuant to S.C. Code Ann. § 9-21-60 (Supp. 2003), S.C. Code Ann. § 1-23-600(B) (Supp. 2003), and S.C. Code Ann. §§ 1-23-310 et seq. (1986 & Supp. 2003).

2. S.C. Code Ann. § 9-1-1540 (Supp. 2003) provides that qualifying members of the South Carolina Retirement System

may be retired by the [State Budget and Control] [B]oard not less than thirty days and not more than nine months next following the date of filing the application on a disability retirement allowance if the medical board, after a medical examination of the member, certifies that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired.

Id. (emphasis added).

3. In the case at hand, Petitioner claims that the permanent physical effects of the injury to her hip and the degenerative disc disease in her lower back have rendered her physically incapacitated for the further performance of her duty as a Vocational Rehabilitation Service Specialist employed by the Department of Vocational Rehabilitation such that she should be entitled to disability retirement benefits from SCRS. However, this claim cannot be sustained.²

² It should be noted that Petitioner bears the burden of establishing, by a preponderance of the evidence, that she is entitled to the disability retirement benefits she seeks. See Leventis v. S.C. Dep't of Health & Env'tl. Control, 340 S.C. 118, 132-33, 530 S.E.2d 643, 651 (Ct. App. 2000) (holding that the burden of proof in administrative proceedings generally rests upon the party asserting the affirmative of an issue); see also 73A C.J.S. Public Administrative Law and Procedure § 128, at 35 (1983) (“In administrative proceedings, the general rule is that an applicant for relief, benefits, or a privilege has the burden of proof, and the burden of proof rests upon one who files a claim with an administrative agency to establish that required conditions of eligibility have been met.”).

4. While Petitioner does have certain physical limitations as a result of her medical conditions, those limitations do not prevent her from performing her prior job duties with the Department of Vocational Rehabilitation, and thus do not entitle her to disability retirement benefits under Section 9-1-1540. Petitioner's residual impairment to her hip and lingering back pain do limit her ability to undertake many physical tasks, particularly those that require significant exertion for sustained periods of time and those that require frequent bending, stooping, and lifting. These impairments also make it uncomfortable for Petitioner to sit or stand in one position for an extended amount of time. However, these impairments do not substantially affect Petitioner's ability to perform her duties as a Vocational Rehabilitation Service Specialist. The light clerical work required by the position does not demand the sort of physical exertion that Petitioner is now incapable of performing. For example, the position never requires Petitioner to carry anything heavier than normal office supplies and accounting files. And, although the position requires Petitioner to spend much of her time seated at her desk, it also affords her frequent opportunities to sit, stand, or walk as necessary to change positions. For example, Petitioner's job requires her to leave her desk with some regularity to use equipment such as the copier and fax machine, to file records, and to collect office supplies. In short, the evidence in the record in this matter demonstrates that Petitioner is not physically incapacitated from performing her prior job duties with the Department of Vocational Rehabilitation.³

Further, these findings are in accord with the conclusions of the two Vocational Rehabilitation disability examiners who reviewed Petitioner's application for SCRS, see Resp't Ex. #1, at 14, 19, the independent vocational rehabilitation consultant retained by SCRS to

³ In addition to the conditions in her hip and back, Petitioner complains of suffering from insomnia and incontinence. However, there is no documentation in the record indicating that Petitioner has been diagnosed with, or is being treated for, incontinence, and it does not appear that, given the office setting in which Petitioner worked, with easy access to several restrooms, a mild incontinence problem would prevent her from performing her job duties. See Resp't Ex. #1, at 40. Further, while Petitioner may have some trouble sleeping, the evidence in the record regarding Petitioner's complaints of insomnia does not suggest that the condition is severe enough to permanently incapacitate her from performing light clerical work in an office setting. See Resp't Ex. #1, at 147-49.

evaluate Petitioner's appeal of the initial denial of her claim, see Resp't Ex. #1, at 41, and a doctor hired by the Social Security Administration to assess Petitioner's disability claims, see Resp't Ex. #1, at 192-99. In fact, one of the Vocational Rehabilitation examiners and the doctor consulted by the Social Security Administration specifically found that Petitioner is even capable of medium work, which includes lifting up to fifty pounds occasionally and twenty-five pounds frequently. See Resp't Ex. #1, at 19, 193-94. Thus, while this tribunal does not wish to disparage Petitioner's serious medical conditions or minimize the extent to which those conditions have limited her physical activities, I cannot find that Petitioner's medical conditions permanently, physically incapacitate her from the further performance of the light clerical work that constituted her job duties as an accounting technician with the Department of Vocational Rehabilitation.

ORDER

Based upon the Findings of Fact and Conclusions of Law stated above,

IT IS HEREBY ORDERED that Petitioner's claim for disability retirement benefits pursuant to Section 9-1-1540 must be **DENIED**.

AND IT IS SO ORDERED.

JOHN D. GEATHERS
Administrative Law Judge
Post Office Box 11667
Columbia, South Carolina 29211-1667

October 19, 2004
Columbia, South Carolina