

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

George V. Priester,	)	
	)	Docket No. 03-ALJ-30-0423-CC
Petitioner,	)	
	)	
v.	)	<b>FINAL ORDER AND DECISION</b>
	)	
South Carolina Budget and Control Board,	)	
South Carolina Retirement Systems,	)	
	)	
Respondent.	)	
_____	)	

**APPEARANCES:** For the Petitioner: Chad L. Bacon, Esq.  
For the Respondent: Sarah G. Major, Esq.  
Stephen R. Van Camp, Esq.

**STATEMENT OF THE CASE**

This matter is before me upon request of George V. Priester (“Petitioner”) for a contested case hearing pursuant to S.C. Code Ann. § 9-21-60 (Supp. 2003). Petitioner is appealing the final decision of the South Carolina Budget and Control Board, South Carolina Retirement Systems (“Retirement System”) which denied his application request for disability retirement benefits.

After notice to the parties, a contested case hearing was held before me at the offices of the Administrative Law Court<sup>1</sup> (“ALC”) in Columbia, South Carolina on February 25, 2004. After considering all the evidence and testimony, I conclude that Petitioner is not entitled to disability retirement benefits.

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<sup>1</sup>On April 26, 2004, Governor Sanford signed House Bill 3235 which changes the name of the South Carolina Administrative Law Judge Division to the **South Carolina Administrative Law Court**.

## **FINDINGS OF FACT**

Having carefully listened to the testimony and observed the demeanor of the witnesses during the hearing, having carefully reviewed the entire record, and having weighed the credibility of all the evidence, taking into account the burden of proof imposed on the parties, I make the following findings of fact:

### **General**

1. The ALC has personal and subject matter jurisdiction.
2. Notice of the date, time, place and nature of the hearing was timely given to the parties.

### **Petitioner**

3. Petitioner was born on August 22, 1951 and is a resident of Beaufort County, South Carolina.
4. Petitioner has been employed by the South Carolina Department of Transportation (“DOT”) for fourteen years as a drawbridge operator (Equipment Operator II) for the Lady Island Bridge, which crosses the intracoastal waterway and is located in downtown Beaufort, Beaufort County, South Carolina.
5. In 2002, Petitioner began experiencing back problems related to a herniated disc. He left work with the DOT in January 2002.
6. Petitioner filed an application for disability retirement benefits in July 2002. After review by the Retirement System, his application was denied.
7. Petitioner was terminated from his job with the DOT on January 3, 2003.

### **Petitioner’s Job Duties**

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This change became effective on the date of the Governor’s signature.

8. Petitioner worked a 40 hour week swing shift as a drawbridge operator; he did not work on Thursday or Friday.

9. Petitioner and his supervisor of three years, Robert R. Pinckney, testified concerning the job duties of a drawbridge operator. Petitioner's primary job duty as the drawbridge operator for DOT at the Lady Island Bridge was to open and close the bridge for approaching vessels.

10. The opening and closing of the bridge is controlled by a panel of electrical switches in the control house.

11. One of Petitioner's duties was to watch for approaching vessels. Sometimes, vessels would contact Petitioner via radio to notify him that they were approaching. However, the bridge also has certain time tables during which it opens and closes. It may also be opened by demand on occasion.

12. When Petitioner opened and closed the bridge to allow vessels to pass through, he was required to record certain information, including the name of the passing vessel, its type, the place the boat was from, and the time of day. As part of this process, sometimes Petitioner walked out onto the balcony of the control house to record this information; oftentimes, he found that this facilitated this job function. He estimated that the time involved in recording this information was approximately 7 to 10 minutes. However, if the vessel was a barge, then the time involved would be approximately 20 to 30 minutes. Petitioner could often obtain this information via radio too.

13. The months of October, November, May and June are the busiest each year. During these months, an average of twelve boats pass through the bridge each day. During all other times of each year, an average of two boats pass through the bridge per day. There are also

times when the bridge is on restriction and cannot be opened.

14. Petitioner testified that he was required to go onto the balcony when barges passed through to determine if they had caused any damage to the bridge.

15. If an accident occurred on the roadway on the bridge, Petitioner was required to call maintenance personnel employed with DOT to remove any debris. He was also to call local police to report the accident. However, he had no investigatory responsibility for any such accidents.

16. Another of Petitioner's duties was the cleaning of the inside of the control house once a week, which included mopping the floor and washing the windows.

17. As Petitioner began each shift, he was required to check the lights on the bridge to ensure they were working. If they were not working, Petitioner might need to replace them.

18. Petitioner was not required to perform any maintenance or repairs to or on the bridge.

19. Petitioner's job required that he lift no more than ten pounds. He was required to walk about one hour each day, stand about one hour each day, and sit about six hours each day. *See Employer's Description of Disability Applicant's Job.*

### **Description of the Bridge and Control House**

20. There is a parking area designated for the use of operators near an entrance to the bridge. From the parking area, operators walk up a slight incline of approximately 925 feet to the base of the control house.

21. The control house is approximately 50 to 75 feet above the bridge roadway. There are twenty six steps from the bridge roadway to the control house. These steps are similar to steps found in a home. Handrails are located on both sides of the steps.

22. The control house is approximately 24 by 24 feet and is octagon shaped. Its inside area is air conditioned and heated. There are windows in each exterior wall. A balcony is also located off the control house. There is an open space with a desk in the middle of the control house along with a reclining chair. The control house has a restroom, television, telephone, and refrigerator. The electrical switches which operate the draw bridge are located inside the control house.

### **Medical Condition of Petitioner**

23. Petitioner alleges he is unable to perform the duties of his job as a bridge operator. His major concern is that he might strain his back and fall when he climbs the stairs to the control house.

24. About twenty years ago, Petitioner underwent surgery on his back for a herniated disc. He has been able to work since that surgery.

25. In January 2002, Petitioner began experiencing severe pain down his lower right leg and pain in his back. He saw Dr. Arthur Jenkins, his family doctor, who referred him for treatment to Dr. Jeffrey Reuben, an orthopaedist with Lowcountry Medical Group, LLC, in Beaufort, South Carolina.

26. Petitioner had an MRI on January 16, 2002. Thereafter, Dr. Reuben recommended a course of treatment that included medication, physical therapy, and epidural steroid injections. At that time, Dr. Reuben felt that Petitioner was a poor subject for surgery.

27. Over the next several months, Dr. Reuben noted improvements in Petitioner's condition. In May 2002, Dr. Reuben felt that Petitioner could safely return to work. Dr. Reuben also ordered him to continue with his home exercise program.

28. Two weeks later, Petitioner returned to Dr. Reuben and told him that he could not return to work. Dr. Reuben's notes indicate that Petitioner was still improving and that the plan was to keep him out of work until he felt comfortable going back. In March 2003, Dr. Reuben recommended to Petitioner to return to work provided the work did not require "heavy labor."

29. In October 2002, a Vocational Rehabilitation examiner scheduled an independent orthopaedic examination for Petitioner with Dr. Edward R. Blocker of Lowcountry Medical Group, LLC. In his report dated October 29, 2002, Dr. Blocker concurred with Dr. Reuben's diagnosis of recurrent disc and nerve compression and agreed with the course of treatment recommended by Dr. Reuben.

30. Petitioner has been taking the prescribed medications, Valium 10mg and Vicodin ES, for pain in his back for the last two years. Both are taken one to two times per day. Petitioner's side effects from these medications are some dizzy spells, light headedness and fatigue.

31. Petitioner also has other medical conditions:

(1) emphysema. Petitioner has been prescribed Prednisone for this and on October 15, 2002, Dr. Jenkins noted it was keeping the problem under control. Petitioner has a history of smoking three packs a day. However, at the hearing he testified that he had limited his smoking to approximately one pack per day.

(2) hypertension. Petitioner testified that he has taken prescribed medication for this condition for many years.

(3) arthritis in his lower back.

32. Petitioner testified at the hearing that his medical conditions have not affected his ability to engage in daily activities, including driving. Also, he testified that he is able to walk for

approximately thirty minutes to an hour before he has to sit down due to back pain. Petitioner testified that he exercises for approximately thirty minutes to one hour each day.

33. After his last day of employment in January 2002, Petitioner did return to work on one occasion to visit with co-workers. During that visit, he climbed up the stairs to the control house and visited for approximately 2 hours.

34. Two other individuals with physical and medical conditions have worked as bridge operators at the Lady Island Bridge. One of them carried an oxygen tank to work with him each day and the other had a prosthetic leg.

### **Psychological and Vocational Evaluation of Petitioner**

**by Robert E. Brabham, Ph.D.**

35. Dr. Robert E. Brabham, an independent vocational consultant, was hired by the Retirement

System to conduct an administrative conference (hearing). During the hearing on July 16, 2003, Petitioner appeared and testified. Subsequently, Dr. Brabham issued a written report with his recommendation that the Retirement System deny Petitioner's application.

36. Dr. Brabham testified at the hearing before the undersigned and was qualified as an expert witness in the area of vocational evaluation and consulting.

37. After reviewing Petitioner's medical records and listening to Petitioner's testimony, Dr. Brabham gave his professional opinion that Petitioner is capable of performing his job duties as a drawbridge operator. He further opined that Petitioner's job did not require levels of exertion in excess of the levels of exertion Petitioner testified that he performed each day in his errands,

activities and chores. Although Dr. Brabham opined that Petitioner was not able to perform heavy jobs, the position of a drawbridge operator afforded Petitioner “unique opportunities for accommodation after he reaches his office setting.”

38. Dr. Brabham stated that Petitioner’s job as a bridge operator was mostly sedentary. Furthermore, he testified that the nature and requirements of the job posed no vocational barriers to Petitioner’s ability to work there. He stated that the job requirements met the physical limitations of Petitioner.

39. In his report, Dr. Brabham noted that Petitioner’s obesity and continued use of cigarettes are contributing factors to Petitioner’s condition and that these factors could only be controlled by Petitioner.

40. Both in his report and in his testimony at the hearing, Dr. Brabham opined that Petitioner’s primary reason for not returning to his job was his fear that he might fall when climbing the steps leading up to the control house. However, he noted that there is no medical record documenting that Petitioner has a history of falling as a result of any medical condition.

41. The court has reviewed the *curriculum vitae* of Dr. Brabham and assigns great credibility to his evaluation herein as well as to his opinion, as expressed both in his report and during the trial. Dr. Brabham has an extensive background in teaching, private practice and government service. Further, he has been qualified as an expert witness before many courts and administrative law tribunals, including this court.

### **Procedural Background and History of the Claim**

42. On July 31, 2002, Petitioner filed a disability retirement application with the Retirement System. In it, he stated that his last day at work was January 5, 2002. Further, he stated that

his sick leave began on January 6, 2002, and that he was on leave without pay beginning July 8, 2002. Petitioner never returned to work and was terminated on January 3, 2003. Petitioner alleges that he is unable to perform his job duties due to back and leg pain and breathing problems associated with emphysema.

43. Upon receipt of Petitioner's application, the Retirement System forwarded Petitioner's claim to the South Carolina Department of Vocational Rehabilitation ("VR") for an evaluation and recommendation. VR appointed a disability examiner who examined Petitioner's file and recommended the denial of Petitioner's claim. This recommendation was forwarded to the three physician Retirement System Medical Board ("Medical Board") for review. On December 10, 2002, the Medical Board denied Petitioner's claim for disability benefits.

44. Petitioner prepared a Reconsideration Disability Report on January 15, 2003, and he filed it with the Retirement System on January 21, 2003. Petitioner's claim was again forwarded to VR for review. A different disability examiner was appointed. After reviewing Petitioner's file, this disability examiner also recommended that Petitioner's claim be denied. After reconsidering Petitioner's claim, the Medical Board denied Petitioner's Disability Claim Reconsideration request on March 25, 2003.

45. Subsequently, Petitioner appealed to the Retirement Systems' Director, Peggy G. Boykin.

After reviewing Petitioner's claim and Dr. Brabham's recommendation from the July 16, 2003 administrative conference, Director Boykin issued the Retirement Systems' Final Agency Determination on September 11, 2003, which denied Petitioner's disability retirement claim.

46. On October 14, 2003, Petitioner filed a request for a contested case hearing with the ALC.

## CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, applicable law, and the evidence, this court concludes, as a matter of law, the following:

### **General**

1. A state employee who, after July 1, 1970, has had five or more years of earned service or a contributing member who is disabled as a result of an injury arising out of and in the course of the performance of his duties, regardless of length of membership on or after July 1, 1985, may be retired by the board 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 duty**, that the **incapacity is likely to be permanent**, and that the member should be retired. S.C. Code Ann. § 9-1-1540 (Supp. 2003).

2. The South Carolina General Assembly has established various procedures for members to comply with in seeking resolution of disputes and claims with the Retirement System. A member may ask the Director to review an initial decision by the Retirement System which is unfavorable. The claimant has the opportunity to present his or her claim in writing. The Director, or a person designated by the Director, may conduct a conference concerning the claim prior to the issuance of a final agency determination by the Director. The Director must make a final agency determination in writing concerning the claimant's appeal.

3. The written decision by the Director is the final decision of the Retirement System concerning the claimant's appeal. If this final agency determination is unfavorable to the

member, the member may request a hearing with the ALC. S.C. Code Ann. § 9-21-50 (Supp. 2003).

4. The chief administrative law judge assigns each case to an administrative law judge who hears the case *de novo* in accordance with the rules of procedure of the ALC. S.C. Code Ann. §§ 9-21-60 (Supp. 2003) and 1-23-600(C) (1976)(as amended).

5. After conducting a hearing, the assigned administrative law judge issues a final decision in a written order which must contain separate findings of fact and conclusions of law. S.C. Code Ann. § 1-23-350 (1976) and ALC Rule 29 (c).

6. The standard of proof in weighing the evidence and making a decision on the merits of a contested case hearing is by a preponderance of the evidence. Anonymous v. State Board of Medical Examiners, 329 S.C. 371, 796 S.E.2d 17 (1998); National Health Corp. v. South Carolina Department of Health and Environmental Control, 298 S.C. 373, 380 S.E.2d 841 (Ct. App. 1989).

To qualify for disability retirement benefits under the Retirement System, a claimant must prove by a preponderance of the evidence that he/she is mentally or physically incapacitated from performing his/her job duties and the incapacity is likely to be permanent.

7. An agency decision must be reached utilizing reasoned judgment and must be based upon adequate determining principles and a rational basis. City of Columbia v. Board of Health and Environmental Control, 292 S.C. 199, 355 S.E.2d 536 (1987).

8. The trier of fact must weigh and pass upon the credibility of the evidence presented. S.C.

Cable Television Association v. Southern Bell Tel. and Tel. Co., 308 S.C. 216, 417 S.E.2d 586

(1992). The trial judge who observes a witness is in the best position to judge the witness' demeanor and veracity and evaluate his testimony. McAlister v. Patterson, 278 S.C. 481, 299 S.E.2d 322 (1982).

9. A court construing a statute must first seek to ascertain and effectuate legislative intent. Koenig v. South Carolina Dep't of Public Safety, 325 S.C. 400, 480 S.E.2d 98, 99 (Ct. App. 1996). The cardinal rule of statutory construction is to give words used in a statute their plain and ordinary meaning without resort to subtle or forced construction. Id. The language must be read to harmonize its subject matter with its general purpose. Id. "In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction." Higgins v. State, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992).

10. While an award must be based upon evidence and not upon surmise, speculation or conjecture, it is not necessary that the percentage of disability or loss of use be shown with mathematical exactness. Roper v. Kimbrell's of Greenville, Inc., 231 S.C. 453, 99 S.E.2d 52, 57 (1957); citing Parrott v. Barfield Used Parts, 206 S.C. 381, 34 S.E.2d 802; Dickey v. Springs Cotton Mills, 209 S.C. 204, 39 S.E.2d 501. However, an award must be founded on evidence of sufficient substance to afford it a reasonable basis. Bundrick v. Powell's Garage, 248 S.C. 496, 151 S.E.2d 437 (1966).

Additionally, our Court of Appeals in Cropf v. Pantry, Inc., 289 S.C. 106, 344 S.E.2d 879 (Ct. App. 1986), cited Professor Larson in determining that "as to issues touching disability, it has been held that the fact-finders may find disability when the medical testimony denies its existence.... 3 A. Larson, *The Law of Workmen's Compensation* § 79.52 (c) n. 33 at

15-426.126–15-426.127 (1983).

Although an impairment rating may not rest on speculation or conjecture, it need not be shown by mathematical precision and it may rely on lay testimony. Further, the trier of fact may find the degree of disability different from that suggested by expert testimony by considering the testimony of the claimant and the vocational expert. Lyles v. Quantum Chemical Co. (Emery), 315 S.C. 440, 434 S.E.2d 292 (1994).

Loss of use or partial loss of use (of a body part) are simple, everyday, unambiguous words, and are to be given their ordinary, generally accepted meaning. McCollum v. Snipes, 213 S.C. 254, 49 S.E.2d 12 (1948). A finding of loss of use of a body member (not directly injured in an accident but resulting from an injury to another body part) can be awarded by the trier of fact where there is nothing in a statute requiring that such part of the body be the direct result of an injury. Roper v. Kimbrell's of Greenville, Inc., 99 S.C. 52, 231 S.E.2d 453 (1957), citing In re Burns, 218 Mass. 8, 105 N.E. 601.

### **Retirement Systems Claims Procedures Act**

11. In 2003 the South Carolina General Assembly passed Act 12 which established the Retirement Systems Claims Procedures Act. This Act required the Budget and Control Board to adopt procedures for handling these cases. That procedure was adopted by the Budget and Control Board on July 1, 2003 and was followed in this case.

## **DISCUSSION**

### **Disability**

S.C. Code Ann. § 9-1-1540 (Supp. 2003) provides that a state employee who, after July 1,

1970, has had five or more years of earned service or a contributing member who is disabled as a result of an injury arising out of and in the course of the performance of his duties, regardless of length of membership on or after July 1, 1985, may be retired by the board 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 duty, that the incapacity is likely to be permanent, and that the member should be retired.

### **Corollary with Workers' Compensation law**

The statutes dealing with disability and qualification for disability benefits do not provide any definition of the words “**duty**” or “**incapacitated.**” Thus, this court must resort elsewhere for guidance in ascertaining their meaning. “Duty” is defined as “any action, task, etc. required by or relating to one’s occupation or position.” Webster’s New World College Dictionary, Third Edition, p. 423. “Capacity” is defined as “a condition of being qualified or authorized; position, function, status, etc.” Id. at 207.

Since there is no guidance for the definition of disability in the Retirement Systems, except for the provision stating that an employee must be mentally or physically incapacitated for duty and that incapacity is likely to be permanent, it is helpful to look at the statutory and decisional law governing compensation for injured workers who suffer disabilities.

The term “disability” in workers’ compensation law is the incapacity because of an injury to earn the wages which the employee was receiving at the time of the injury in the same or any other employment. Our Supreme Court has held that total disability in compensation law does not require complete helplessness. Wynn v. Peoples Natural Gas Co., 238 S.C. 1, 118 S.E.2d

812 (1961), *citing* Colvin v. E. I. DuPont De Nemours Co., 88 S.E.2d 581 (1955). It is a relative term and must be related to the occupation of the claimant. If one is unable to perform common labor, cannot obtain employment as such and is not qualified by training or experience for any other job, then he is disabled. Stated another way, disability is an inability to perform services other than those that are so limited in quality, dependability, or quantity that no reasonably stable market exists for them. “When the incapacity for work resulting from an injury is total, the employer shall pay...to the injured employee during the total disability....” Singleton v. Young Lumber Co., 236 S.C. 464, 114 S.E.2d 837 (1960).

Justice Toal, in writing the opinion in Stephenson v. Rice Services, Inc., 473 S.E.2d 699 (1996), described workers’ compensation law in South Carolina as a combination of two competing models, one economic and the other medical. The economic model compensates workers for reductions in their earning power/capacity caused by work-related injuries or accidents. The medical model compensates workers for a physical disability and impairment caused by work-related injuries or accidents. Wigfall v. Tideland Utilities, Inc. 354 S.C. 100, 580 S.E.2d 100 (2003).

As to the workers’ compensation system, a claimant can recover disability benefits if he/she has a loss in earning capacity or has a partial disability, *i.e.*, injury to a specific body part. There is no similar provision in the Retirement System. Further, the workers’ compensation system provides by statute that certain physical conditions/impairments resulting from work-related injuries carry a presumption of total disability and no loss of earning capacity must be proved (*e.g.*, where a claimant has 50 % or more impairment to the back). There is no such provision in the Retirement System, either.

The general disability provisions in the workers' compensation system require the claimant to prove the claimed total disability by a preponderance of the evidence. The employee must show that he is unable to earn the wages which he was receiving at the time of the injury in the same or any other employment, or that he can perform only limited tasks which are so limited in quality, dependability, or quantity that no reasonably stable market for them exists. Stephenson v. Rice Services, Inc., *supra*, at 702; McCollum v. Singer Co., 300 S.C. 103, 386 S.E.2d 471 (Ct. App. 1989); Coleman v. Quality Concrete Prods., Inc., 245 S.C. 625, 142 S.E.2d 43, 44 (1965).

The Retirement System statutory provision only requires incapacity from the further performance of his duty. S.C. Code Ann. § 9-1-1540. This court believes that the intent of the General Assembly, when it passed this Retirement System statute providing for disability benefits, was that an employee need only prove that he is incapacitated from performing his previous work, i.e. unable to work and perform the tasks he performed in his previous job and earn the wages he was receiving while he was working. The term "duty" as used in the statute equates to his previous job and not to any other employment.

### **Analysis**

This court would agree with the Retirement System that in any total disability claim in the Retirement System, the following concepts must be considered:

- (1) medical diagnosis;
- (2) mental or physical impairment;
- (3) vocational limitation;
- (4) incapacitation; and

(5) permanency.

A medical diagnosis exists if sufficient medical records indicate that an individual suffers from a particular physical or mental medical condition. If such is present, then one looks at the extent of the impairment of the condition, *i.e.*, does it interfere with the claimant's ability to perform his/her daily work tasks. Third, the functional or vocational limitation exists if the physical impairment is job related and it interferes with the claimant's ability to perform his/her daily tasks at their job. Fourth, the claimant is incapacitated if the vocational limitations prevent the claimant from doing his/her job. Lastly, the impairment must incapacitate the claimant from performing his/her job permanently.

As to Petitioner's medical condition, Petitioner suffers from lower back pain related to a herniated disc and from emphysema.. Petitioner controls his back pain with medication and exercise. Petitioner also controls his emphysema with medication.

Petitioner's medical condition has not affected his ability to engage in daily activities. Petitioner drives vehicles and is able to walk for approximately thirty minutes to an hour before he must sit due to back pain. Further, Petitioner exercises approximately thirty minutes to one hour per day. Petitioner testified that sometimes he skips doses of his pain medication. His breathing problems are not so severe that he has had to completely quit smoking. Petitioner testified at the hearing that he continues to smoke approximately one pack of cigarettes per day.

Petitioner's job is largely sedentary and requires little mental or physical demands. It consists primarily of opening and closing the drawbridge using a panel of electrical switches and recording minimal information about the vessels that pass through the bridge. Petitioner only stands for approximately 7 to 10 minutes at a time, and occasionally from twenty to thirty

minutes during a shift. He can sit or walk around at all other times.

The physical requirements of Petitioner's outside activities are not any more strenuous than those of his job. His primary reason for not returning to work is a fear of falling when climbing the steps to the control house. As for walking the ramp and climbing up the steps to the control house, however, Petitioner can arrive early for his shift which would provide to him sufficient time to walk from the parking lot to the steps and then climb the steps at a slow pace. Petitioner did not provide any documentation to the court of any falls he has suffered related to any medical condition. Also, he testified that he returned to his place of employment on at least one occasion since he left his duty. During that visit, Petitioner climbed up to the control house without injury.

Petitioner's medical files were reviewed by several medical doctors, two disability examiners, a three physician Medical Board and a vocational consultant, Dr. Robert Brabham. All find that he is able to perform his duties at his present job. Dr. Arthur S. Jenkins, Petitioner's doctor, noted in a letter to the Retirement System dated March 21, 2003, that Petitioner's "back problem is compatible with his job description."

Petitioner's medical condition does not prevent him from performing the job duties of a drawbridge operator. In support of this conclusion is testimony that there have been two other individuals who performed the duties of a bridge operator who had physical problems and limitations (one had to carry and use an oxygen tank). I find and conclude that the record, taken as a whole, supports a finding that the Petitioner is not disabled. Petitioner is not permanently unable to return to his previous employment or duty.

## **Conclusion**

Based upon the analysis contained in the Findings of Fact, Conclusions of Law, and Discussion, this Court concludes that although Petitioner does have some physical limitations as a result of his medical problems, they are not sufficiently severe so as to limit him from working as a draw bridge operator on a permanent basis. Accordingly, the decision of the Retirement Systems is affirmed. Petitioner is not entitled to disability retirement benefits.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law,

**IT IS HEREBY ORDERED** that Petitioner's claim for disability retirement benefits is denied and the decision of the Retirement System is affirmed.

**AND IT IS SO ORDERED.**

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Marvin F. Kittrell  
Chief Administrative Law Judge

May 7, 2004  
Columbia, South Carolina