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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

AGNETA DOBOS,

Plaintiff and Appellant,

v.

LOS ANGELES COUNTY
EMPLOYEES RETIREMENT
ASSOCIATION,

Defendant and Respondent.

B271646

(Los Angeles County
Super. Ct. No. BS151426)

APPEAL from a judgment of the Superior Court of
Los Angeles County, James C. Chalfant, Judge. Affirmed.

Verdi Law Group and Alfred Joseph Verdi for Plaintiff and
Appellant.

Steven P. Rice, Chief Counsel, and Francis J. Boyd, Senior
Staff Counsel, for Defendant and Respondent.

Agneta Dobos appeals from the judgment entered following the trial court's denial of her petition for writ of administrative mandate seeking reversal of the decision of the Los Angeles County Employees Retirement Association (LACERA) rejecting her application for a service-connected disability retirement. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Dobos's Employment by LAC-USC Medical Center

Dobos was employed as a permanent staff nurse at the Women's Hospital of Los Angeles County USC Medical Center from 1985 until April 28, 1992. During that time she was disciplined on multiple occasions for failures to comply with nursing policies and procedures. In February 1988 she was notified she had been discharged but, following an appeal, received instead a 30-day suspension. In November 1991 she received another 30-day suspension without pay, which was sustained after her appeal.

Dobos was again informed she would be suspended for 30 days after she was accused of misconduct on March 25, 1992.¹

¹ As Dobos described these events to a psychiatrist in 2006, she had been assisting a physician in starting an intravenous line when she was informed she was needed to admit a patient. She asked if another nurse could handle the admission and was accused of insubordination. When told she was again being suspended and should go home, "all of her strength went away," and she "couldn't walk anymore." She reported she retreated to a side room to collect herself but was then involuntarily transported to the general hospital where she was kept under observation for six hours, "treated like a criminal" and advised to

On April 16, 1992 she was notified of her employer's intent to discharge her and on April 28, 1992 was formally discharged. After Dobos appealed to the Board of Civil Service Commissioners, a hearing officer recommended her suspension and discharge be sustained based on findings of unsatisfactory work performance, failure to follow workplace policies and unprofessional conduct. On April 7, 1993 the Board adopted the proposed decision and approved Dobos's discharge effective April 28, 1992.

2. Interim Legal Proceedings

On October 5, 1992, approximately five months after her employment with the County had ended, Dobos filed an application for long-term disability benefits under the County's Long-Term Disability and Survivor Benefit Plan, alleging she first became disabled on March 25, 1992, the date of her final suspension for misconduct. Voluntary Plan Administrators, Inc. (VPA), the third party administrator for the County's Plan, denied Dobos's application for benefits on the ground there was insufficient medical information to support her alleged disability. Dobos filed an appeal with VPA on June 18, 1993, and VPA upheld its decision on November 4, 1993. (See *Dobos v. Voluntary Plan Administrators, Inc.* (2008) 166 Cal.App.4th 678, 681 (*Dobos I.*))²

enter an inpatient mental health unit before she was allowed to leave.

² Dobos renewed her VPA application in February 2005, alleging she suffered disabling injuries on March 25, 1992 during the performance of her duties for the County. (*Dobos I, supra*, 166 Cal.App.4th at p. 681.) The VPA again denied her

On November 9, 1993 Dobos applied for Supplemental Security Income (SSI) disability benefits through the Social Security Administration (SSA), but her application was denied on July 8, 1997. She filed a second application in November 1998, alleging her disability began on August 1, 1992 “due to a dislocated jaw, problems with her teeth, headaches, high blood pressure, and problems with her arms and legs.” After initially being found disabled as of November 25, 1996, Dobos filed a federal action the parties ultimately settled by agreeing to remand the matter for a renewed hearing. (See *Dobos v. Apfel* (9th Cir. 2001) 20 Fed.Appx. 719.) On remand Dobos was found to have been totally disabled since November 1, 1993 as a result of “medically determinable impairments including temporomandibular joint disease . . . and a somatoform disorder. . . .”³

application on the ground she had failed to satisfy the Plan’s eligibility requirement she be totally and continuously disabled for a six-month qualifying period following the injury, finding she had been terminated before the expiration of her qualifying period. (*Id.* at p. 682.) Dobos’s administrative appeal was denied, and she unsuccessfully sought mandamus relief in the superior court. We affirmed that decision in *Dobos I.* (*Id.* at pp. 684-690.)

³ Temporomandibular joint disease, or TMJ, is a condition involving myofascial pain in the muscles that control jaw function. (See <<https://www.nidcr.nih.gov/oralhealth/topics/tmj/tmjdisorders.htm#whatDisorders>> as of April 25, 2017.)

Somatoform disorders, now included within the umbrella term somatic symptom disorder (see Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Ch. 9 (DSM-5)) are “a group of psychological disorders in which a patient experiences physical

3. *The LACERA Proceeding*

On January 27, 2005 Dobos applied to LACERA for a service-connected disability retirement based on orthopedic conditions affecting her back and a loss of strength in her arms and legs. In support of her application Dobos submitted a form completed by John L. Howard, M.D., an orthopedic surgeon who evaluated her on January 17, 2005, stating she was permanently incapacitated from chronic cervical, dorsal, lumbosacral spasms and strain (plus probable arthritis), chronic lumbar disc syndrome and bilateral lumbar radiculitis and had been disabled since March 25, 1992, when she fell at work. On June 5, 2005 she amended her application to include stress and TMJ. The LACERA Board of Retirement accepted the application for processing on the issues of psychiatric injury and TMJ brought on by stress, based on the SSA's finding Dobos had been disabled for these conditions.

Under appointment by the Board, Stuart Shipko, M.D., performed a psychiatric examination of Dobos on January 6, 2006. Dr. Shipko recounted Dobos's lengthy history of medical and dental complaints and the conclusions of many physicians (including psychiatrists) and dentists that Dobos suffered from psychiatric disorders.⁴ During the examination Dobos's mood

symptoms that are inconsistent with or cannot be fully explained by any underlying general medical or neurologic condition." (Spratt, et al., "Somatoform Disorder," found at <<http://emedicine.medscape.com/article/918628-overview>>, as of April 25, 2017.)

⁴ According to records reviewed by Dr. Shipko, Dobos had seen more than 100 dentists by 1993. She had been arrested on

was neutral and her affect appropriate. She appeared intelligent and educated and possessed well above average recall and cognition. She became emotional only when Shipko commented her mental problems did not seem to constitute an impairment that would prevent her from working. Shipko found Dobos was not delusional but diagnosed her with factitious disorder with predominantly physical signs and symptoms (Axis I), personality disorder NOS [not otherwise specified] with narcissistic borderline and sociopathic features (Axis II), multiple dental procedures and physical complaints (Axis III), as well as occupational and health problems (Axis IV) with a global assessment of functioning score of 45 (Axis V).⁵

eight occasions since 1986 and was the subject of four restraining orders issued on behalf of various dentists.

⁵ Explaining his diagnosis of a factitious disorder, Dr. Shipko stated, “I am referring to [Dobos’s] behavior toward doctors and dentists. The dental records were most unusual, and really suggested a Munchausen type syndrome where [she] was fabricating problems specifically to obtain procedures.” Shipko observed that Dobos’s factitious disorder was complicated by a longstanding (that is, preexisting her employment with the County) personality disorder featuring a narcissistic and sociopathic behavioral trait: “[I]t seems that this is a woman who just does what she wants to do and then seems oblivious to the fact that there [are] going to be consequences.” He noted her “behaviors in the workplace were not too dissimilar from her behaviors with the dental practitioners in the sense that she was running the show” and her “blaming” of others when they did not agree with her perceptions. Shipko described Dobos as having a “largely characterological personality dysfunction superimposed on a Munchausen syndrome.”

In response to the questions posed by the Board in its referral, Dr. Shipko opined that Dobos was not capable of working with the public and performing the duties required of a nurse at the time of his evaluation. He also concluded there was no causal connection between her employment by the County and her disabling illnesses because her personality disorder preceded the incident of March 25, 1992 that she alleged caused her to become non-functional. Her dental and psychiatric problems began in her youth, predating her employment by the County; and he estimated they only became disabling in 1995. As he explained, “[t]he patterns of behavior that ultimately led to [Dobos] being terminated from work were well established and ongoing for years prior to her actual termination and were not a result of her employment . . . or aggravated by her employment [¶] The records [do not] indicate . . . [she] was actually impaired and unable to work at the time she stopped working. Her behaviors were inappropriate and discharge was determined to be appropriate. Although discharge was determined to be appropriate by the Civil Service Commission there is no indication that she was actually unable to function as a nurse at that time.” On April 5, 2006 the Board accepted the medical and psychiatric evidence⁶ and found Dobos was not eligible for a service-connected

⁶ The Board also received a February 28, 2006 otolaryngologic evaluation of Dobos’s TMJ complaints from Geoffrey A. Smith, M.D. Dobos told Dr. Smith she had not experienced dental problems prior to 1992 and attributed her disability at the time of her termination to heart problems. Smith found “[n]o evidence of temporomandibular jaw joint disorder, other than a natural progression of her dental problems” and concluded she was not incapacitated due to those problems at the time of his evaluation or before March 25, 1992.

disability retirement because she was not disabled before she left County employment. Dobos's appeal from the decision was heard over the course of three days in late 2012 and early 2013. After reviewing the extensive medical records accumulated by Dobos since 1991 and assessing the testimony of witnesses,⁷ the hearing officer issued proposed findings of fact and a recommended decision denying Dobos's application because she was not permanently incapacitated within the meaning of Government Code section 31720⁸ at the time she was terminated from County employment. The hearing officer also found Dobos's application was not timely under section 31722, because she had failed to establish she had been continuously incapacitated from her April 28, 1992 termination to January 27, 2005, her disability-retirement application date. The Board adopted the recommended decision on July 2, 2014.

4. *Dobos's Petition for Mandamus Relief*

Dobos filed a petition for writ of administrative mandate challenging the Board's action on October 2, 2014. The petition was heard on February 2, 2016. In a tentative decision the court found Dobos's moving papers were procedurally defective because of a failure to provide citations to the administrative record, a

⁷ Dobos's supervisor during the last three years of her employment, Eun Young Han, testified she did not recall Dobos having any mental or physical disabling conditions. Shown an off-duty report verifying Dobos had been out with chest pains for two weeks in June 1991, Han denied this report raised any "alarm bells" because Dobos would not have been permitted to return to work without a doctor's release.

⁸ Statutory references are to this code unless otherwise stated.

violation of Los Angeles County Superior Court Local Rules, rule 3.231(i)(2). Although the court independently denied the petition on this ground, it also addressed the merits of Dobos's claim, finding that Dobos had failed to meet her burden of proof that she was permanently incapacitated prior to her discharge and continuously incapacitated from April 28, 1992 through January 27, 2005. The court found particularly persuasive the lack of any contemporaneous medical records suggesting Dobos was permanently disabled before she was terminated from her job with the County.⁹ After argument the court adopted its tentative decision as its order. Judgment was entered against Dobos on February 19, 2016.

⁹ The most contemporaneous record submitted by Dobos was a report of occupational illness or injury completed by Jose Caceres, M.D., on April 16, 1992, diagnosing repeated harassment in the workplace, anxiety-depressive state, hyperventilation syndrome, chronic lumbar spine sprain/strain and generalized weakness. Dr. Caceres made similar diagnoses on May 14, 1992, May 21, 1992, June 22, 1992, July 20, 1992 and September 17, 1992. The September report noted that Dobos's lumbar spine sprain/strain was resolving and recommended, as he had on each previous occasion, she see a psychologist. On October 5, 1992 Caceres completed an attending physician's statement for an application for long-term disability benefits diagnosing her with recurrent headaches in the workplace with stressful job situation, anxiety-depressive state, atypical chest pain secondary to work anxiety, recurrent palpitations, hyperventilation syndrome and lumbar spine sprain/strain. He stated Dobos could return to her usual job on October 15, 1992.

Stanley J. Geller, M.D., prepared neurological evaluation reports in May and June 1992. His June 3, 1992 report states that Dobos could continue working as a registered nurse.

DISCUSSION

1. *Governing Law and Standard of Review*

Under the County Employees Retirement Law of 1937 (CERL) (§ 31450 et seq.), a permanently incapacitated member of a county employees' retirement association may apply for service-connected disability retirement regardless of age if the "member's incapacity is a result of injury or disease arising out of and in the course of the member's employment, and such employment contributes substantially to such incapacity" (§ 31720, subd. (a)). A member who applies for service-connected disability retirement has the burden of showing that the disability was caused by his or her employment. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1337; *Valero v. Board of Retirement of Tulare County Employees' Assn.* (2012) 205 Cal.App.4th 960, 966.) To prove causation the applicant must show his or her employment contributed substantially to, or was a real and measurable part of, the employee's permanent disability. (*Alberda v. Board of Retirement of Fresno County Employees' Retirement Assn.* (2013) 214 Cal.App.4th 426, 434 (*Alberda*); *Valero*, at p. 964.)

To obtain review of a retirement board's adverse determination of eligibility for disability retirement, the applicant may file a petition for writ of mandate in the superior court under Code of Civil Procedure section 1094.5. (See *County of Alameda v. Board of Retirement* (1988) 46 Cal.3d 902, 906.) When the superior court reviews a final administrative decision that substantially impacts a fundamental vested right, the court examines the administrative record for errors of law and exercises its independent judgment upon the evidence. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 816, fn. 8 (*Fukuda*); *Bixby v. Pierno* (1971) 4 Cal.3d 130, 143; *Alberda, supra*, 214 Cal.App.4th 426.)

“In carrying out this independent review, however, the trial court must afford the agency’s decision a strong presumption of correctness and must impose upon the petitioner the burden of showing that the agency’s findings are contrary to the weight of the evidence, i.e. the decision was not supported by the preponderance of the evidence. [Citations.] An abuse of discretion is established if the trial court determines that the findings are not supported by the weight of the evidence.” (*Alberda*, at p. 433, citing *Fukuda*, at p. 811.) When an administrative decision is supported by undisputed facts, but the undisputed facts are subject to conflicting inferences, the superior court exercising independent judgment may draw its own inferences from the evidence in the record; if the inferences so drawn are supported by substantial evidence, they are binding on the reviewing court. (*Interstate Brands v. Unemployment Ins. Appeals Bd.* (1980) 26 Cal.3d 770, 774, fn. 2; *Pasadena Unified School Dist. v. Commission on Professional Competence* (1977) 20 Cal.3d 309, 314.)

Following the superior court’s independent review of the record, the scope of review on appeal is limited: “Our task is to determine whether substantial evidence in the administrative record supports the trial court’s ruling [citation], except when the appellate issue” includes questions of law, which we review de novo. (*Alberda*, *supra*, 214 Cal.App.4th at pp. 434-435; see *Fukuda*, *supra*, 20 Cal.4th at p. 824 [“[e]ven when . . . the trial court is required to review an administrative decision under the independent judgment standard of review, the standard of review on appeal of the trial court’s determination is the substantial evidence test”]; see also *Bixby v. Pierno*, *supra*, 4 Cal.3d at p. 143, fn. 10 [“[a]fter the trial court has exercised its independent

judgment upon the weight of the evidence, an appellate court need only review the record to determine whether the trial court's findings are supported by substantial evidence"].)

When, as here, the superior court has ruled the weight of the evidence fails to support the petition, our "substantial evidence" review of that conclusion is, in practice, akin to appellate review in civil failure-of-proof cases: If the evidence in the administrative record compels a finding in favor of the appellant as a matter of law, we must reverse. (Cf. *Dreyer's Grand Ice Cream, Inc. v. County of Kern* (2013) 218 Cal.App.4th 828, 838 ["where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law"]; *Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 769 [same].) The question "becomes whether the . . . evidence was (1) "uncontradicted and unimpeached" and (2) "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding."'" (*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 466.) However, if there is substantial evidence on both sides of the factual issues or a complete absence of evidence, we will affirm the superior court. (See *Pasadena Unified School Dist. v. Commission on Professional Competence*, *supra*, 20 Cal.3d at p. 314 ["In reviewing the evidence, an appellate court must resolve all conflicts in favor of the party prevailing in the superior court and must give that party the benefit of every reasonable inference in support of the judgment. When more than one inference can be reasonably deduced from the facts, the appellate court cannot substitute its deductions for those of the superior court."].)

*2. Substantial Evidence Supports the Superior Court's
Finding Dobos Was Not Permanently Disabled When She
Was Discharged in April 1992*

Dobos challenges the decisions of both the Board and the superior court as failing to understand her physical and mental disabilities were intertwined and continuously disabling from the time she was accused of insubordination on March 25, 1992 and collapsed from stress. The record does not support her claim.

Dobos does not contend she was disabled before March 25, 1992. As was appropriate, the superior court reviewed contemporaneous medical records to evaluate whether any evidence supported her claim she became disabled on that date. Dr. Caceres's reports are the most significant medical evaluations from that time period, and they do not support a finding of permanent disability. On April 16, 1992 Caceres diagnosed Dobos with anxiety and depression and hyperventilation syndrome resulting from workplace stress, as well as chronic lumbar spine sprain/strain and generalized weakness.¹⁰ Caceres placed her on temporary total disability and recommended a neurological consult, a complete blood test, an electrocardiogram, physical therapy and Motrin for her pain. In his report after a May 21, 1992 examination Caceres noted Dobos had refused to be seen by a psychologist or a psychiatrist even though "her main problem is anxiety/depressive state." Caceres again placed her on "total temporary disability until June 22, 1992." After the June 22, 1992 follow-up examination Caceres reported she had

¹⁰ As recorded by Dr. Caceres, Dobos reported her condition started when her supervisor suspended her: "I get acut[e] chest pain, nervousness, cons[t]ant harassment, false accusation, anxious, difficulty sleeping."

been seen by a neurologist;¹¹ and, while her orthopedic complaints had somewhat improved, she was still depressed and anxious about an upcoming hearing concerning her discharge. Caceres prescribed additional follow up with the neurologist and consultation with a psychologist, as well as continued physical therapy.

On September 17, 1992 Dr. Caceres reported Dobos had still not been seen by a psychologist. He continued her total temporary disability until October 15, 1992. Caceres also completed an application for Dobos to receive long-term disability benefits and stated she would be able to return to her usual job on October 15, 1992. Caceres completed a second long-term disability application on February 15, 2005 stating Dobos was permanently disabled and had been since March 25, 1992. The record does not contain any medical basis for the change in status or any evaluations of Dobos by Caceres during the intervening years.

Dobos was also evaluated by a psychologist, James V. Bonura, Ph.D., on October 5, 1992 “to assess the emotional effect of her work-related stress on her current ability to work.” Bonura diagnosed Dobos with anxiety disorder, NOS, and

¹¹ Neurologist Stanley J. Geller, M.D., first examined Dobos on May 6, 1992. He detected no neurological problems except for tenderness in her neck and diagnosed her with cephalgia (headaches) arising from vascular instability and injury to the brachial plexus, which, he cautioned, could become chronic. He scheduled her for a follow-up examination and indicated she remained temporarily disabled. Geller saw Dobos again on June 3, 1992 and reported she would have chronic pain requiring a limitation precluding her from “significant lifting or heavy work” but could “continue working as a registered nurse.”

recommended short-term supportive psychotherapy to reduce her depression and anxiety. He further stated her “temporary total disability could have been avoided if [she] had had different supervision,” an observation apparently based on Dobos’s account of the stress she experienced at work. He also noted she had refused psychological testing on the ground it would stigmatize her future employment as a registered nurse.

Although these medical records support a finding Dobos was temporarily disabled by the events surrounding her termination, they do not support an inference of permanent total disability. None of the doctors who evaluated her during the year following her termination concluded she was permanently disabled at the time of her discharge. If anything, there is an inference she resisted psychological treatment that could have ameliorated her condition. Dr. Shipko’s 2006 psychiatric evaluation sheds some light on Dobos’s non-work-related “largely characterological personality dysfunction” that may have impeded her failure to comply with the recommended treatment plans. He found she suffered from a longstanding personality disorder featuring a narcissistic and sociopathic behavioral trait: “[I]t seems that this is a woman who just does what she wants to do and then seems oblivious to the fact that there [are] going to be consequences.” He noted her problems at work appeared to stem from the same personality disorder and concluded her disability was not service-connected, as it pre-existed her employment.

In short, Dobos failed to carry her burden of proving to the superior court the Board had erred in denying her application for

a service-connected disability retirement.¹² In light of the deferential standard of review governing this appeal, we have no basis to reverse the judgment entered by the superior court.

3. *Substantial Evidence Also Supports the Superior Court's Finding Dobos Was Not Continuously Disabled from April 28, 1992 Through January 27, 2005*

Section 31722 requires an applicant for disability retirement benefits to file his or her application within four months of the termination of employment or demonstrate he or she was “continuously physically or mentally incapacitated to perform his or her duties.” As discussed, Dobos’s medical records at most support a finding she was temporarily disabled until October 2005. Subsequent medical examinations do not support her contention she was continuously permanently disabled thereafter.

There is a notable absence of medical records from the end of 1992 until 1995. In her application for SSI disability benefits, Dobos stated she had been incapacitated since August 1992 by

¹² Dobos heavily relied on a finding of disability made by Dr. Howard when he completed the form submitted with her application. The superior court found Howard’s statements insufficient to support a finding of permanent disability because the record contained no treatment records to support the form’s conclusions. When there are no reasons or factual basis provided for a physician’s conclusions, the conclusory statements are valueless. (Evid. Code, §§ 405, 801, 803; *Franklin v. Workers’ Comp. Appeals Bd.* (1978) 79 Cal.App.3d 224, 235; see *Zemke v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 794, 798 [expert opinion which does not rest upon relevant facts or which assumes incorrect legal theory does not constitute substantial evidence upon which apportionment finding can be based].)

TMJ, a condition she never presented to Dr. Caceres during her monthly follow-up examinations. The SSA ultimately found her permanently disabled as of November 1, 1993 by TMJ and a somatoform disorder. Based on this record, substantial evidence supported the trial court's conclusion she was not continuously permanently disabled from the date of her termination.

DISPOSITION

The judgment is affirmed. Los Angeles County Employees Retirement Association is to recover its costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

SMALL, J.*

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.