

ATTACHMENT C

RESPONDENT'S ARGUMENT

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11 **BOARD OF ADMINISTRATION**
12 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

13 In the Matter of the Application for Disability
14 Retirement of
15 DEBRA A. POSTIL,
16 Appellant,
17 and
18 COUNTY OF RIVERSIDE,
19 Respondent.

20 **AGENCY CASE NO. 2022-0751**
21 **OAH NUMBER 2023060296**
22 **RESPONDENT DEBRA A. POSTIL'S**
23 **ARGUMENT TO PROPOSED DECISION**

24 **TO THE OFFICE OF ADMINISTRATIVE HEARINGS, ADMINISTRATIVE LAW JUDGE,**
25 **AND TO THE BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC EMPLOYEES'**
26 **RETIREMENT SYSTEM:**

27 PLEASE FIND the written argument of Respondent Debra A. Postil to the Proposed Decision
28 as follows:

1 **I. INTRODUCTION**

2 Respondent is in receipt of the Proposed Decision of the Administrative Law Judge in the
3 matter of the Application for Disability Retirement for Debra A. Postil, Respondent, and County of
4 Riverside Respondent. We ask that the Board would evaluate the entire record in ruling on Ms.
5 Postil’s appeal. As an alternative, if the Board is inclined to confirm the Proposed Decision, we
6 herein request that the Board does not assign the case as precedent, as there are elements that
7 undermine its precedential value.
8

9 **II. RESPONDENT PROVIDED SUBSTANTIAL EVIDENCE OF INCAPACITY**

10 A. Legal Standard.

11 In *Mansperger v. Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 876), the
12 California Court of Appeal held that the standard for determining disability under section 21156 is
13 whether the applicant is "substantially unable to perform his [or her] usual duties." ([underline added]
14 See Government Code section 21156). Respondent Postil spent 16 years as a frontline trial
15 prosecutor, where her assignments could and would involve violent crimes, including homicides. In
16 fact, the “premiere” assignments within their office were gang homicides and sexual assault and child
17 abuse (“SACA”). The essential task list referred to in testimony included the *complete* range of legal
18 work in the field of prosecutions, and multiple categories extending from gang violence to other
19 major crimes.

20 B. Substantial Evidence Supports Postil’s Diagnoses and the Resulting Substantial Incapacity,
21 Including PTSD, As Well as the Inability to Type as Much as Needed at the DA’s Office.

22 As discussed at the hearings, two qualified medical evaluators imposed permanent work
23 restrictions on Respondent that impeded her ability to work as a prosecutor as a result of injuries
24 suffered from and on the job. Specifically, Orthopedic QME Dr. David Wood (as referred to in
25 CalPERS expert Dr. Kelly’s report) restricted Respondent to occasional handling/fingering and
26 keyboarding less than 25% of the time. In her role as an appellate prosecutor, Appellant spent
27 approximately 80% of each workday typing, keyboarding, and using a mouse to draft pleadings,
28 emails, legal motions, memos, and correspondence. 80% of her assigned cases involved victims of

1 trauma, while 20% involved civil asset forfeiture cases. As testified to, with her restrictions, she can
2 no longer type or keyboard at the frequent, repetitive rate required as an attorney in the DA's office.
3 Additionally, psychiatric QME Dr. William Deardorff permanently restricted Postil from any work
4 involving trauma victims and violent acts due to possible PTSD and secondary trauma. Dr. Nancy
5 Woods agreed with limiting Respondent's exposure to violent cases and had previously written
6 requests for accommodation before and after her involuntary leave.

7 C. Postil Could No Longer Do the Volume of Violent and Disturbing Cases Necessary in Her
8 Job As a Prosecutor.

9 Without the DA's Office agreeing to a different non-violent unit or providing an
10 accommodation, which was requested and denied (See Exhibits E-H), Respondent could not continue
11 as a Deputy DA without regular exposure to the trauma that caused her condition. Without an
12 accommodation or putting her into a different non-violent unit, Respondent was forced to leave her
13 position. The Workers Comp QMEs had confirmed Ms. Postil suffers career-ending injuries and
14 permanent disability resulting from her job duties as a prosecutor. The evidence showed that Postil
15 met her burden of proving an inability to perform her normal work assignment, and it was not refuted
16 by the CalPERS IME Doctors, who used the wrong standard, and/or assumed her ability to be
17 accommodated in opining no substantial incapacity.

18
19 **III. THE PROPOSED DECISION FLOWS FROM MEDICAL OPINIONS THAT ARE**
20 **BASED ON THE WRONG STANDARD OR ASSUME INCORRECT FACTS.**

21
22 A. The Proposed Decision Ignores that Dr. Matthew Carroll's Opinion Was Based on the Wrong
23 Standard, and Based on the Last Position Respondent Held.

24 The Proposed Decision states that Dr. Nancy Woods, Psy.D, who is Respondent's treating
25 therapist, did not know if the respondent met the disability standard for CalPERS. ¶ 40. However,
26 this is somewhat misleading. Counsel Joseph Richardson asked Dr. Woods during re-direct
27 examination, in a question that clearly explained the applicable standard, and she confirmed her
28 opinion of Ms. Postil's substantial incapacity. Specifically, the record reflects:

1 Q: If I was to hypothetically tell you that someone is substantially incapacitated for purposes
2 of CalPERS when they can't do the job that they are required to do as the job is described in
3 that particular profession, would you say that Ms. Postil was substantially incapacitated, and
4 therefore, unable to do her job?

4 A: Yes.

5 (Hearing Transcript, P. 245:8-15).

6 While CalPERS claims that Dr. Woods did not know the applicable standard, she does know
7 her job, and her conclusions of Ms. Postil are rooted in her doing her job as it pertains to Ms. Postil.
8

9 B. Dr. Carroll's Opinion Relies on the Accommodation of Respondent's Employer.

10 The list of duties for the essential task list of a Riverside County prosecutor (Respondent's
11 position) is extensive. Dr. Carroll confirmed that looked to the information in the essential task list in
12 reaching his conclusion of substantial incapacity, but he relies on Respondent being accommodated in
13 supporting his opinion. Meanwhile, Dr. Carroll, whose IME CalPERS relied on, walked back his
14 statement from his IME that strongly suggests his opinion on Postil's (lack of) substantial incapacity
15 is rooted in the availability of other jobs at the DA's office, and the related potential ability for Postil
16 to be accommodated. Specifically, he essentially admitted that perhaps he "overstepped" his
17 authority in opining as he did because he talked about Postil's ability to be accommodated. While
18 CalPERS contends that their expert's opinion of no incapacity as to Postil should be valued, he uses
19 the wrong standard, basically saying that because she can be accommodated, she is not substantially
20 incapacitated. This is a misstatement of the law. He stated the following in his report:

21 [Postil] may have difficulty working cases that involved significant violence as she says she
22 ruminates about these cases and worries. However, there are many possible arenas as noted in
23 her essential task list that [she] should be capable of working as a district attorney. . . .

24 (Carroll Report, P. 9, Exhibit B).

25 Dr. Carroll also confirmed at the hearing that he made the following statement: "[Postil] does
26 have anxiety about returning to work where she would have to view violence case or potentially work
27 with violent people, but that based upon her essential job list, is not a required part of her job *if her*
28 *job is willing to place her in another position.*" ([italics added] Carroll Report, P. 10, Exhibit B).

1 In fact, based on Postil’s testimony, being able to view violent cases or work with violent
2 people is absolutely part of her job, which Dr. Carroll did not understand. Moreover, it is clear that
3 his misunderstanding helped to form the basis of his actual opinion.

4 C. Dr. Kelly Was Not Clear on the Definition of Substantial Incapacity and Stated it Was
5 “Rather Vague.”

6 Dr. Jon Kelly, an orthopedist, testified that Postil was not substantially incapacitated, focusing
7 on her orthopedic issues. Interestingly, Dr. Kelly did not need to be cross-examined to confirm his
8 confusion surrounding the definition of substantial capacity. On cross-examination, he confirmed
9 what he first stated in direct; namely, he acknowledged that he did not have the specific definition of
10 substantial incapacity, and had looked for it on the CalPERS website. Specifically, he stated that the
11 definition was “still rather vague.” (Dr. Kelly Testimony, Hearing Transcript, P. 82:15-85:25). P.
12 84:17-23.

13 In sum, the Proposed Decision ignores the fact that Dr. Carroll and Dr. Kelly, who are paid to
14 know the applicable standards and to opine with them in mind, used false assumptions, were unclear
15 on the applicable standard, and/or overstepped their responsibility in doing so. Moreover, it assigns
16 much less value to Dr. Woods’ opinion than her extensive experience with and observations of
17 Ms. Postil should have warranted. For this reason, the Board should re-consider the Proposed
18 Decision.

19
20 E. In Any Event, This Decision Should Not Have Precedential Value.

21 It well may be that the Board gives deference to the factual conclusions that the Proposed
22 Decision makes regarding Respondent; particularly, what the Proposed Decision states about the
23 reasons it believes Respondent left work, or the belief that certain parts of her diagnosis (i.e. PTSD),
24 are less than definite. However, there are several reasons that this decision should not have
25 precedential value. It cannot be ignored that the basis of the opinions of the IME doctors here should
26 not instill confidence in creating a precedent.

27 First of all, even if the board confirms the Proposed Decision, the decision is still largely based
28 on the testimony of two medical experts who both expressed a lack of clarity about the definition of

1 substantial capacity. Consistent with that lack of clarity, Dr. Carroll confirmed that he had overreached
2 in his opinion. Further, he recognizes that, for all of his experience, he had never done an IME to
3 evaluate an attorney, let alone a prosecutor, prior to this case. Moreover, he strongly indicates that he
4 opines as he does based on Respondent's ability to do *some* of the things on the essential task list,
5 when the legal standard relates to her ability to do all the things that the job requires. Also, while Dr.
6 Carroll professes that Postil was not substantially incapacitated, he bases it on (a) the last rotation that
7 Postil held, and, relatedly (b) assumes her ability to be in a position without violent images (i.e.
8 accommodation) in doing so.

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10 Dated: December 21, 2023

MCCUNE LAW GROUP, APC

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14 By: _____
15 Joseph L. Richardson
16 Attorney for Respondent
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