

ATTACHMENT A

RESPONDENT'S PETITION FOR RECONSIDERATION

PETITION FOR RECONSIDERATION

Re: in the Matter of the Application for Industrial Disability Retirement of Robin M. Rothwell-Allison, Respondent, and Department of Insurance, Respondent. OAH No. 2020110125.

I, Respondent Robin M. Rothwell-Allison, am petitioning the California Public Employees' Retirement System (CalPERS) Board of Administration (Board) to reconsider and reverse its decision to adopt the Proposed Decision of Administrative law Judge Howard W. Cohen (ALJ Cohen) dated July 08, 2021.

The Decision denying my application for industrial disability retirement is not supported by evidence presented by CalPERS as it has been documented and established by my treating physicians that I am substantially disabled from performing the usual and customary duties of a Special Investigator at the California Department of Insurance (CDI) due to my condition of trigeminal neuralgia (TN) and work-related stress.

TN is a well-recognized and documented disabling condition. It is a rare neurological condition sometimes described as the most excruciating pain known to humanity. It causes chronic and excruciating facial pain that feels like electrical shocks. TN can be triggered by the wind, talking, chewing, laughing, touching the face, brushing the teeth, applying makeup, etc. The intensity of pain can be physically and mentally incapacitating.

There is no known cure for TN, only medications to try to control the pain, and experimental therapies or surgical procedures, including a form of brain surgery called micro vascular decompression, all of which may or may not work and could make the condition worse.

It is well established that the condition can be exacerbated by stress to which my long time treating neurologist, Dr. Mollie Johnston, stated in medical records submitted into evidence, as did Dr. Natalia Ratiner, a neurologist with over 55 years of experience, in her Independent Medical Examination of me, also submitted into evidence. The job of a Special Investigator is a law enforcement position and is known to be extremely stressful.

My treating physicians, doctors Mollie Johnston, Ramya Malchira and Barry Halote all provided overwhelming competent medical evidence, including Physician's Reports of Disability and Certification of Health Care Provider, evidencing that I was unable to perform my job duties due to chronic and disabling episodes of TN and work related stress exacerbating my condition and that I was taken off work as a result.

As my TN became more debilitating and the attacks more frequent, I was increasingly prohibited from performing my job duties. Disabling TN episodes strike unexpectedly at any time, for one thing making it extremely dangerous when driving

as the attacks render me unable to move, speak, eat, or do anything other than to close my eyes and stay completely still.

The Essential Function Duty Statement for the Special Investigator states 40% of the job entails gathering evidence and conducting interviews; 30% investigative reports and case preparation (includes testifying in court); 15% preparing and serving subpoenas, preparing search warrants, arrest warrant affidavits and execution of warrants; 15% administrative (various duties including conducting outreach, acting as interim supervisor, providing training and guidance to other investigators).

The majority of the essential functions require talking and driving on a regular basis. A Special Investigator who is unable to speak and/or drive is undeniably substantially incapacitated from performance of duty. Both Dr. Halote and Dr. Malchira stated I was unable to drive and speak, as did my former CDI Supervising Investigator June Arago (Arago) and Supervising Investigator Dorothy Torrescano (Torrescano), who testified as witnesses at the administrative hearing.

ALJ Cohen did not give weight to the extensive competent medical evidence of my treating physicians and the witness testimony of CDI supervisors Arago and Torrescano, that I was unable to perform the majority of my duties, and his proposed decision should not be adopted as it incorrectly evaluates my disabling medical condition of TN. He is unfamiliar with the condition and therefore is unable to render an informed decision and instead based it on the opinions of CalPERS' biased experts, doctors Khaled Anees and Lawrence Warick, who only saw me once for a few hours when I was not experiencing disabling attacks of TN. Doctors Warick and Anees never addressed the fact that TN is a known disabling impairment which limits an individual's ability to function on the job and their opinions based on one short examination should be given little to no weight.

In addition, ALJ Cohen did not take into consideration the side effects of the medication I am prescribed to mask the TN pain. I take high dosages of Gabapentin, Oxcarbazepine, and Baclofen on a daily basis. Using Gabapentin together with Oxcarbazepine increases side effects such as dizziness, drowsiness, confusion, blurry vision, and difficulty concentrating. It is advised that driving can be dangerous. I experience all of those side effects which also substantially incapacitated me from performing my job duties. The medications sometime stop working and then I have to be prescribed higher dosages or try a new regimen of different medications.

ALJ Cohen only gave credibility to the opinions of CalPERS' biased experts, doctors Anees and Warick, for which there is simply no support for their conclusions that I was not substantially incapacitated from performing my duties as a Special Investigator. Just because their one-time short examinations of me were unremarkable on the days of their examinations does not negate the fact and medical evidence of my long time treating physicians that I was substantially incapacitated by TN and work-related stress, and as a result was unable to perform my job duties.

Neither Dr. Anees nor Dr. Warick took into consideration that TN can strike unexpectedly, is debilitating, and is exacerbated by stress. They only saw me once, so

are therefore unable to form competent medical opinions as to my condition and level of substantial incapacity. Their opinions that I am not incapacitated from performing my duties as a Special Investigator should in no way be relied upon as compared to the competent medical evidence of my treating physicians who have a long history with me, substantial knowledge of my conditions and knowledge of my inability to perform my duties as a Special Investigator. The objective findings of my treating physicians should bear the most weight in supporting the appeal of my industrial disability retirement application.

Although ALJ Cohen states in his decision that "The condition exists continually, but does not continually flare up", contrary to his non-medical opinion, my TN did flare up continuously as evidenced by my continuous visits to my primary care physician, Dr. Malchira, and my neurologist, Dr. Mollie Johnston due to me suffering continuous flares of disabling TN. The flares and work-related stress was continuous, chronic, unrelenting and disabling, rendering me unable to perform my job duties.

When attacks of debilitating TN pain strikes, which it can unexpectedly and randomly, I am unable to function in any capacity, especially in work duties that involve driving, talking, testifying in court, and meeting with the public on a regular basis. ALJ Cohen stated that I had been dealing with the condition since 2014 and had been able to work as a Special Investigator for some years, eventually with certain accommodations. Despite the fact that I may have previously been able to function in a highly stressful job with the condition of TN, that was in the very beginning when my TN was mild and only lasted a day or two then went into remission for a while. In 2018 when it became more frequent and more debilitating and no longer entered remission, I was unable to perform my job duties and was not given a reasonable accommodation. ALJ Cohen is incorrect when he said I was given "certain accommodations" as I was denied an accommodation, thus his analysis is incorrect.

ALJ Cohen also states in his proposed decision that "For industrial disability purposes, "disability" and "incapacity for performance of duty" mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board..., on the basis of competent medical opinion." (Gov. Code Section 20026.)

As part of my retirement application for industrial disability, my treating psychologist, Barry A. Halote, PH.D, provided a Physician's Report on Disability stating that I was substantially incapacitated from the performance of the usual duties of my position for my current employer for longer than 12 months. Dr. Halote stated that I was unable to perform my job duties due to work related stress and depression. He said that due to painful TN flare ups from stress I was unable to speak, drive or do any sort of duties during the episodes.

My primary care physician, Dr. Ramya Malchira, also provided a Physician's Report on Disability stating that I was substantially incapacitated from the performance of the usual duties of my position for my current employer for longer than 12 months. Dr. Malchira said that stress at work made my TN worse causing flare ups of excruciating pain, and that I was unable to eat, drive or speak during the episodes and unable to concentrate at work.

ALJ Cohen also stated that “The July 2019 findings of Drs. Halote and Malchira are based primarily on respondent’s self-reporting symptoms and her belief as to their cause.” His opinion should be disregarded as there is no relevant decision which requires that the only way for an individual to prove disability is through objective evidence of disability. Almost all medical care is based on the subjective or self-reported complaints of patients other than those conditions that are visible through x-ray, CT scan or MRI, chemical tests through blood or urine analysis, broken bones etc. Doctors routinely treat patients based solely on their subjective complaints. Stress, depression, psychological disorders, and TN among other things are largely diagnosed and treated based on patients describing their symptoms to a physician.

ALJ Cohen cited (*Mansperger, supra. At pp.886-887.*) in his decision writing “It is well established that, when an applicant can perform his or her customary duties even though doing so may be difficult or painful, the employee is not incapacitated and does not qualify for a disability retirement.” His opinion should not be given consideration as I was unable to perform my customary duties at all when I experienced debilitating attacks of TN as I was rendered unable to speak, drive, move, interview people, testify in court, prepare reports, execute search and arrest warrants, etc., (as evidenced by the medical evidence of my treating physicians and the testimony of CDI Supervisors Arago and Torrescano). Thus, I was substantially incapacitated from doing my job. It is not something I can just work through that’s mildly “difficult or painful” as it is completely debilitating and excruciating.

How would I be able to interview people, testify in court, talk on the phone, meet with people, or execute warrants if I was unable to speak or move and attempting to do so would be impossible or cause excruciating pain? And the possibility of experiencing a debilitating attack when driving could cause me to have an accident? His analogy in citing the Mansperger case does not apply when it comes to the condition of TN.

In addition, ALJ Cohen gave no weight or consideration to my denial of a reasonable accommodation for my medical condition of TN. I was denied an accommodation via memorandum from Sandra Jeffries (Jeffries), Health & Safety Analyst, Human Resources Division, based on her allegation that CDI never received medical certification from my neurologist. However, when I asked Jeffries for proof of her requests for information from my doctors, she was unable to provide me with copies of the letters she claimed to have sent to them. My doctors informed me they never received any requests from Jeffries or the CDI. I provided emails and documentation entered into evidence at the hearing when testifying to this, but ALJ Cohen instead gave credibility only to Jeffries denial letter of 03/19/2019 wherein she stated she never received the medical certification. She never received them because she never requested them, and she was negligent in her duties to assist an employee in a reasonable accommodation request.

On 11/13/2020, I was awarded a settlement by the Workers’ Compensation Appeals Board. ALJ Cohen gave no weight to this award although it arose out of the same mental and physical conditions that I based my disability retirement application on and the focus of the issues was identical.

TN is a well-documented disability as it interferes with job performance and daily life both mentally and physically. My TN was so debilitating that it incapacitated me to where I was substantially unable to perform my usual job duties for an extended duration of more than 12 months, as evidenced by my treating physicians' records, which is what should be given the most credibility in my application for industrial disability retirement.

Any Special Investigator or other person diagnosed with debilitating and chronic episodes of TN would be unable to perform their job duties and should be awarded disability retirement. Because the pain from TN can flare suddenly and without warning, people who suffer from TN do not know and cannot predict when their attacks and pain will strike. The unpredictability of TN is a contributing factor to its debilitating nature.

Disability benefits for TN under the Social Security program (SSDI) and/or pursuant to an employer-sponsored group plan (ERISA) are awarded when the flare-ups of pain are severe, frequent, impair work and cannot be adequately controlled, and should be the same for CalPERS' employees like myself.

For the reasons set forth herein, I respectfully request that the Board reverse its Decision to adopt ALJ Cohen's Proposed Decision and reconsider my petition or provide me with an appeal of the original Administrative Hearing with another Administrative Law Judge.

Sincerely,

Robin M. Rothwell-Allison

Robin M. Rothwell-Allison

Dated 10/14/2021: 10/14/2021