

**ATTACHMENT A**

**THE PROPOSED DECISION**

**BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA**

**In the Matter of the Application for Disability Retirement of:**

**DEBRA A. POSTIL, Respondent**

**and**

**COUNTY OF RIVERSIDE, Respondent.**

**Agency Case No. 2022-0751**

**OAH No. 2023060296**

**PROPOSED DECISION**

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on August 22, 2023, and October 9, 2023.

Mehron Assadi, Staff Attorney, represented petitioner, Keith Riddle, Chief, Disability and Survivor Benefits Division, Board of Administration, California Public Employees' Retirement System (CalPERS), State of California.

Joseph Richardson, Attorney at Law, McCune Law Group, APC, represented respondent Debra A. Postil, who was present at the hearing.

There was no appearance by respondent County of Riverside (County). Upon proof of compliance with Government Code sections 11504 and 11509, this matter proceeded as a default against County, pursuant to Government Code section 11520.

Oral and documentary evidence was received. The record was held open until October 23, 2023, for the parties to submit their closing briefs. The parties timely submitted their closing briefs, the record was closed, and the matter was submitted for decision on October 24, 2023.

## **ISSUE**

At the time of respondent's<sup>1</sup> application for disability retirement, was she permanently disabled or incapacitated from performing the usual and customary duties of a Deputy District Attorney for the County, due to orthopedic conditions of carpal tunnel syndrome and cervical spine sprain/strain and a psychological condition of posttraumatic stress disorder (PTSD)?

## **SUMMARY OF DECISION**

Respondent had the burden to prove that, at the time of her application, she was permanently disabled or substantially incapacitated from performing her regular and customary job duties of a Deputy District Attorney for the County. The competent medical evidence presented did not support her claim that she was permanently disabled or incapacitated from performing the regular and customary duties of a

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<sup>1</sup> Hereafter, Ms. Postil will be referred to as "respondent" in the decision herein.

Deputy District Attorney for the claimed orthopedic and psychological conditions. As such, respondent's claim for disability retirement is denied.

## **FACTUAL FINDINGS**

### **Preliminary Matters**

1. Respondent was last employed by the County as a Deputy District Attorney III. By virtue of her employment, respondent was a local miscellaneous member of CalPERS subject to Government Code section 21150. Respondent has the minimum service credit necessary to qualify for retirement. Respondent resigned from her position in approximately 2022, and began working as an attorney for various private law firms, including her own.

2. On December 30, 2021, respondent signed an application for disability retirement with CalPERS. She alleged her disability occurred on February 4, 2004, and is ongoing, and specified the disability as "PTSD, carpal tunnel syndrome, cervical spine strain/sprain." Respondent claimed her disability occurred due to "repetitive trauma from job duties and exposure to violent cases." She asserted having the following limitations: "15 minute break every hour, lifting, pushing pulling more than 20 pounds, legal cases triggering PTSD (involving trauma victims, assault, violent acts, etc)." She wrote, "I have been unable to return to work in my usual and customary occupation."

3. CalPERS obtained respondent's medical records and reports related to her conditions. CalPERS selected Matthew Carroll, M.D., a board-certified psychiatrist, and Jon Kelly, M.D., a board-certified orthopedic surgeon, to perform independent medical evaluations (IMEs) of respondent. Dr. Carroll and Dr. Kelly provided CalPERS

with narrative reports of their findings and conclusions. After reviewing these documents, CalPERS determined that when respondent filed her application for disability retirement, she was not permanently disabled or substantially incapacitated from performing the usual and customary duties of a deputy district attorney, due to her claimed orthopedic and/or psychological conditions.

4. On July 15, 2022, CalPERS issued a determination and notified respondent that her application for disability retirement based on her claimed orthopedic and psychological conditions was denied. CalPERS advised respondent of her right to appeal that determination.

5. On July 26, 2022, respondent appealed.

6. On March 27, 2023, petitioner filed a Statement of Issues in his official capacity. Respondent timely filed a notice of defense; this hearing followed.

### **Job Description Documents**

7. The documents titled "Reasonable Accommodation Essential Functions and Duties Worksheet" and "Physical Requirements of Position/Occupational Title" outline the tasks and physical requirements of respondent's position of a Deputy District Attorney III. Dr. Carroll and Dr. Kelly relied upon these documents in formulating their opinions. Both of these documents were admitted as evidence and considered in reaching a determination in this matter.

## **Evidence Presented by CalPERS**

### **TESTIMONY AND IME REPORTS OF DR. MATTHEW CARROLL**

8. The following is a summary of the reports of medical expert, Matthew Carroll, M.D., as well as his testimony, which is consistent with his reports. Dr. Carroll has been a board certified psychiatrist since 1996 and has had a subspecialty in forensic psychiatry since 1997. He earned a degree in biology from the Cornell University in 1984 and his medical degree from George Washington University in 1989. He completed his residency at Naval Medical Center San Diego, and a fellowship in forensic psychiatry at Case Western Reserve University in 1999. He served in the United States Navy from 1989 until 2002, as a psychiatrist and general physician. He has a private practice where he has conducted forensic evaluations for CalPERS since 2002 and workers compensation cases, and other criminal and civil matters involving fitness for duty evaluations, conservatorship evaluations, competency evaluations, and presentencing evaluations. He was employed by San Diego County as a psychiatrist in its emergency unit at a county hospital and a forensic clinic for cases at the downtown court. For 14 years, he conducted weekly evaluations mostly involving PTSD at the Department of Veterans Affairs. He is an assistant clinical professor at the University of California, San Diego, and an adjunct professor at the University of San Diego. He has been a licensed psychiatrist for 34 years and has treated patients for about 30 years. Dr. Carroll is a medical expert in his field of psychiatry.

9. Dr. Carroll conducted an IME of respondent on May 11, 2022. The IME included a clinical interview of respondent, review of past medical records, the administration of various assessments designed to assist Dr. Carroll in rendering a conclusion about respondent's claimed psychological condition. At the time of the evaluation, respondent informed Dr. Carroll that her mother was in hospice. At the IME,

respondent's complaints included: she felt more hypervigilant; she felt more worried like when she saw a homeless woman with her hand in her pocket and when people reach towards their waistband; and she ruminated on graphic death photos and persons in cases who had the same names as people in her community. Respondent said she received counseling in law school for stress and treated with a counselor for relationship issues from 2014 to 2015. She more recently has been seen by Nancy Woods, Psy.D., with whom she spoke at length about relationship issues and PTSD surrounding her work.

10. Dr. Carroll conducted the Minnesota Multi-Phasic Personality Inventory-2 (MMPI-2) test on respondent, which consists of 569 true/false questions. She was found to be open and cooperative with no signs of malingering. The testing indicated she had some problems more in the depression range with symptoms of anxiety, and a potential diagnosis of dysthymic disorder. The results of the MMPI-2 showed no indication of PTSD.

11. Dr. Carroll conducted the Montreal Cognitive Assessment (MoCA) test, which consists of a series of questions and some written answers. MoCA is a basic cognitive test that, if administered to a person with dementia or a significant head injury, would yield poor results. The average person scores between 28 and 30 out of 30. Respondent's score was 30, which suggests she has an intact ability to remember basic things and follow basic instructions.

12. Based on his testing and evaluation of respondent, Dr. Carroll diagnosed her with depressive disorder, unspecified, which is similar but not the same as dysthymic disorder. He further concluded respondent had depressive symptoms, specifically, pertaining to her mother being in hospice. However, respondent did not have "full blown depression." Dr. Carroll did not find that respondent had dysthymic

disorder because she did not have long-term symptoms for more than two years. He also found her depression was "unspecified" because it did not fit into an exact category such as major depressive disorder where there is difficulty functioning in life or at the occupational level.

13. Dr. Carroll prepared a Supplemental Report on July 11, 2022, due to his receipt of a psychological QME by William Deardorff, Ph.D. Dr. Deardorff reported there was nothing in the record that suggested respondent was ever temporarily totally disabled or temporarily partially disabled on a psychological basis. Dr. Deardorff continued, "The applicant worked successfully until taken off work due to her orthopedic complaints." Dr. Deardorff nonetheless diagnosed respondent with PTSD. Dr. Carroll testified that although he and Dr. Deardorff came to different conclusions as to the final diagnostic impression, they are in agreement as far as respondent not being substantially disabled.

14. Dr. Carroll testified that respondent did not have a psychological disorder that rises to the level of substantial incapacity to perform the usual and customary job duties of a Deputy District Attorney III. He did not diagnose her with PTSD because the records he reviewed and assessments he conducted did not support that diagnosis. He opined that, although respondent may have been involved in cases at work where she viewed unpleasant photos, that type of exposure does not rise to the level of PTSD. However, respondent does have significant symptoms of depression, as her mother was in hospice and likely to pass away soon. Respondent referenced a death threat in 2006 when a person in court yelled that she wanted to kill respondent, but this event also would not cause PTSD. PTSD is diagnosed when persons experience traumatic events such as combat, wars, sexual assault, and stalking, and the exposure is at significant levels. Respondent's claimed exposure did not rise to any significant level of



trauma that would cause PTSD. This does not mean she did not experience a scary event. But, in Dr. Carroll's opinion, respondent's claimed experiences do not rise to the level of PTSD. Respondent also told Dr. Carroll that she had a boyfriend who was a coworker and who worked on a Mexican mafia case, but she did not receive any direct threats to herself. There was another incident regarding a fake phone call saying her mother was kidnapped, which was certainly disturbing, but it is not enough to cause PTSD. There are components of the job of a Deputy District Attorney III, such as looking at violent photos and handling sexual assault and child pornography cases that could cause some degree of PTSD, but Dr. Carroll did not find that in this case. Dr. Carroll would have expected respondent, if she were exposed to those things, to talk more with Dr. Woods about having nightmares or being bothered about them. Anyone who sees pictures of child pornography is going to be bothered, but this does not mean it causes flashbacks, nightmares, or difficulty in functioning. Dr. Carroll did acknowledge that respondent had symptoms of anxiety. However, he did not find that respondent is substantially incapacitated from performing her job duties.

15. Dr. Carroll noted that after respondent left her employment with the County in approximately 2022, she had a website marketing her private law practice and referencing her experience working on sexual assault cases, murder cases, and other types of criminal cases. Dr. Carroll testified that if respondent had a substantial disability due to PTSD related to her work as a Deputy District Attorney III, she would not be able to have a website "where she could put herself out as being able to do these types of cases." He continued, "That's not running away from it or avoiding it, that's running towards it." Dr. Carroll further testified that respondent is now working at Frantz Law Group and handling cases dealing with mass torts and deaths related to fires. She was able to get hired in this full-time position as an attorney, which shows she is able to function as an attorney.

16. Dr. Carroll reviewed the treatment records by Dr. Woods. He disagrees with Dr. Woods as to whether respondent has a substantial inability to perform her customary work tasks. He explained there is a difference between having difficulty performing a job and not liking a job. People quit their jobs every day because they decide they do not want to do their jobs anymore. They might have symptoms of anxiety and nervousness, but they can still do their jobs. He referenced Dr. Woods's treatment note on September 30, 2020, that states respondent would benefit from a different assignment that does not create such a "dissonance in her heart and mind and the philosophy of the current administration." Dr. Carroll notes respondent did not care for the philosophy of her previous employer and/or how her previous employer treated people, such that respondent's difference in opinion would likely cause some problems in the workplace. Dr. Woods had also reported that respondent had "burnout" at work.

17. Dr. Carroll noted that respondent had not been prescribed psychiatric medications, to his knowledge, but he believed Dr. Woods had recommended them. He opined that respondent would benefit from psychiatric medications because they would help "tone down" her anxiety symptoms and help when she has memories that she believes are triggering.

18. Dr. Carroll testified after respondent had testified, and he reviewed respondent's testimony. Dr. Carroll testified about respondent's testimony regarding her transfer – and demotion - to the writs and appeals unit within the District Attorney's Office and not being able to keep up with the workload. He assessed that her feelings of being overwhelmed and not being able to keep up was not considered a substantial incapacity. Her role was different from her prior role as a trial attorney. He simply did not see how when she read something in a case within the writs and

appeals unit, how this would bring back memories to the point where it would cause her an inability to function in her job. Dr. Carroll also remarked that, during her career at the District Attorney's Office, respondent was convicted for driving under the influence of an alcoholic beverage (DUI) and she did not receive any more promotions. He testified that having a DUI "can certainly derail your career."

19. Regarding respondent's workers' compensation claim, Dr. Carroll remarked he did not know the details of the settlement for her claim but that CalPERS's disability standard is much higher than the standard for disability in workers' compensation cases.

20. On cross-examination, Dr. Carroll was asked about his IME where he wrote respondent "may (have) difficulty in working in cases that involve significant violence . . . she ruminates about these cases and worries. However, there are many possible areas . . . in her essential task list that she should be capable of working . . . ." He testified that respondent's position's duty worksheet and physical requirements worksheet listed many tasks that did not involve violence. He understands that respondent does not want to work on cases involving violence, but this does not mean she cannot perform other job tasks. He does not feel respondent is an individual suffering from a disorder due to conditions like schizophrenia or a head injury where she cannot do any work at all for the District Attorney's Office, but rather respondent is someone who is reluctant to work on certain cases.

21. On cross-examination, Dr. Carroll was also asked if he had the impression that respondent did not want to "get better?" He replied that if a person who is at the point where they resign from their job and apply for disability, he would hope they would consider the benefit of psychiatric medications, especially if the person was told this was a possible solution. She had already undergone therapy and eye movement

desensitization and reprocessing (EMDR) therapy with Dr. Woods. He does not feel at all that respondent did not want to get better. In fact, she developed a website to solicit work and she obtained a full-time job at a law firm, and she is now employed at another law firm.

### **TESTIMONY AND IME REPORTS OF DR. JON KELLY**

22. The following is a summary of the reports of medical expert, Jon Kelly, M.D., as well as his testimony, which is consistent with his reports. Dr. Kelly testified in support of CalPERS. He is a board certified orthopedic surgeon since 1994. He earned his undergraduate degree, magna cum laude, from the University of Notre Dame in 1980 and his medical degree from Tulane Medical School in 1984. He completed his residency at Naval Medical Center San Diego in 1991, and a fellowship at the University of New Mexico Medical Center in 1993. He served as the Chairman of the Department of Orthopedics at Palomar Hospital from 2002 until 2004, and as the Physician's Representative to the State Legislature in Sacramento in 2002. He served in the United States Navy from 1980 until 2000. He currently has a practice where he performs orthopedic surgeries at affiliated hospitals throughout San Diego County. He conducts about one forensic evaluation each month for CalPERS. Dr. Kelly is a medical expert in his field of orthopedics.

23. Dr. Kelly conducted an IME of respondent on May 18, 2022. Respondent presented with a history of carpal tunnel syndrome and she had been off work for about two years during which time her symptoms had improved. She also had mild degenerative disc disease in her cervical spine with no evidence of a neurological impairment. Dr. Kelly found that respondent did not have a substantial impairment as she had no definite impact on her ability to perform the activities required of a Deputy District Attorney III. Her carpal tunnel syndrome was moderate based on neurological

testing performed in 2019. She was a good candidate for carpal tunnel release surgery based on his clinical exam. However, she did not have the mindset to undergo surgery and that would be a personal decision on her part. Respondent expressed an interest in other types of treatment such as topical creams. She also was not working at her job that she felt attributed to the onset of symptoms of carpal tunnel syndrome. However, if she could not do her job because of carpal tunnel syndrome, Dr. Kelly would recommend she undergo surgery because it is one of the most successful orthopedic surgeries with an 80 percent patient satisfaction rate. At the time he evaluated respondent, he did not believe that she was physically incapable of typing.

24. Dr. Kelly also found that respondent's degenerative disc disease at C5-C6 did not affect her ability to perform her job duties because she had no neurological compromise as there was no pressing of the nerve root. Her degenerative changes were common in at least 50 percent of women at age 30 and were considered to be asymptomatic.

25. Dr. Kelly issued a Supplemental Report on August 2, 2022, indicating he reviewed respondent's additional treatment records but they did not change his conclusions.

26. Dr. Kelly testified after respondent had testified on the first day of hearing. Respondent's testimony regarding her inability to do the physical requirements of her job did not change his opinions.

27. On cross-examination, Dr. Kelly was asked if he reviewed the evaluation for carpal tunnel syndrome by Aurelia Nattiv, M.D., who reported respondent was 80 percent improved and wanted to treat with an integrative doctor. Dr. Kelly replied that he reviewed Dr. Nattiv's evaluation and noted in his own evaluation that respondent

had declined surgery. Dr. Kelly testified that carpal tunnel syndrome fluctuates such that when a patient returns to work, the symptoms will worsen and there will be a probable recurrence of the condition. As such, the patient "probably should have the surgery."

28. Ultimately, Dr. Kelly opined that respondent was not substantially incapacitated to perform her work duties as a Deputy District Attorney III, due to her carpal tunnel syndrome or cervical spine condition.

### **TESTIMONY OF INVESTIGATOR PAUL HARMON**

29. The following is a summary of the testimony of Paul Harmon. He is employed as an investigator with the CalPERS's investigation unit. He previously worked as a sworn peace officer, and last held the position of detective.

30. Investigator Harmon was tasked with conducting an investigation of respondent. He took several screenshots of a website that he discovered when he searched respondent's name on Google. The website appeared to be respondent's website for her law firm that featured her as the sole practicing attorney. The screenshots purported that respondent has experience and/or was accepting clients for various types of cases including those involving adult sexual abuse and assault, abuse in medical settings, abuse in spa/fitness and therapy settings, abuse involving Uber and Lyft, child sexual abuse, vehicle accidents, elder abuse, personal injury, and criminal defense of cases involving DUI, domestic violence, assault and battery, misdemeanors, felonies, fraud, and theft. The screenshots also featured results of respondent's past cases including a case involving gang members who were sentenced to life without parole, a case involving vehicular manslaughter, and a case involving a sexual assault resulting in a global class action settlement for victims.

## **Evidence Presented by Respondent**

### **TESTIMONY AND LETTERS OF SUPPORT OF DR. NANCY WOODS**

31. The following is a summary of the testimony of medical expert, Nancy Woods, Psy.D., which is consistent with her letters of support. Dr. Woods testified in support of respondent. She has been a licensed psychologist since 2009. She earned a "diploma in nursing" from the Toledo Hospital School of Nursing in 1983, a bachelor's degree in human development from Hope International University in 1996, a master's degree in counseling psychology from Alliant International University in 2003, a doctorate in clinical psychology from Alliant International University in 2006, and a bachelor's of science in nursing from the University of Louisiana, Lafayette, in 2017. She is currently enrolled in a master's degree in nursing program at Spring Arbor University. She currently has a private practice in psychology. In psychology, she has been employed and/or interned at the West County Counseling Center, County of Orange – Youth and Family Resource Center, County of Orange – Juvenile Drug Court Program, and the University of California, Irvine, Medical Center – Burn Center. Dr. Woods is a medical expert in her field. In nursing, she has a history of employment at Northwest Ohio Developmental Center, Norrell Health Care in Georgia, a hospital in Fountain Valley, California, and the University of California, Irvine, Medical Center. Dr. Woods is a medical expert in her field of psychology.

32. In her private practice in psychology, Dr. Woods treats patients for conditions such as depression, PTSD, anxiety, and attention deficit hyperactivity disorder (ADHD). She treats trauma patients and utilizes EMDR therapy. She "teaches patients the ability to sooth themselves if things get out of hand."

33. Dr. Woods began treating respondent on October 25, 2017, for issues related to respondent's personal/romantic relationships. Respondent was also dealing with a head injury she sustained while sledding down a volcano during an international trip. Respondent complained of not being able to find the right words; being somewhat unaware of things that occurred or things she should have put on her calendar but did not; and struggling with some of her job requirements such as the volume of cases and her "philosophical differences" with coworkers in her department. Dr. Woods was aware that respondent had symptoms of burnout at work. Dr. Woods testified, "[Respondent] enjoyed her job and wanted to do well, but she was triggered by a lot of the things that she was viewing and seeing . . . ." Respondent was also struggling with handling cases that involved gang activity and experiencing fear related to those cases and parties.

34. Dr. Woods testified there was "some possible PTSD" with respondent and "they did some re-processing with EMDR and to release the anxiety and stress that was lodged there from her trauma." There were other triggering events involving a threat to respondent's boyfriend who also worked in her office; an incident when respondent was walking down the street with a friend and respondent felt threatened by a passerby; an incident where there was a riot at respondent's neighbor's home and respondent called 911; and handling cases a high volume of cases, murder cases, and viewing photos of the victims. Dr. Woods conducted a Beck Depression Inventory Test and assessed respondent had major depression. She recalled when respondent received a performance improvement plan at work and how this was distressing for respondent. Dr. Woods made recommendations such as respondent taking time off work and a work accommodation of being able to work at her own pace.



35. Dr. Woods addressed a workers' compensation QME conducted by Dr. Deardorff who assessed that respondent had PTSD and suggested a work restriction of not handling cases dealing with trauma victims. Dr. Woods found this restriction to be appropriate because she agreed that respondent had PTSD. Respondent also had a history of alcohol abuse and she had been convicted of a DUI. Respondent had been sober for about 10 months when Dr. Woods began treating respondent who was attending Alcoholics Anonymous (AA) sessions. Respondent had talked about being embarrassed to return to work after her DUI. Respondent was stressed about whether her office was going to accept her accommodation requests. Respondent had also taken time off work to help her mother who was critically ill. Dr. Woods assessed that respondent could not perform the job duties she was doing before as a District Attorney partly because of the volume of work and because of mental health issues mostly related to violent cases. Respondent was "feeling stuck" at the District Attorney's Office because her accommodation requests were not being met.

36. Dr. Woods testified about respondent not wanting to take psychiatric medications and this not being unusual or "out of sorts" for a patient. Respondent could have taken psychiatric medications for PTSD, but they may not have worked the way she wanted, so the other option was to pursue therapy to deal with her triggers.

37. Dr. Woods and respondent discussed other employment options. She told respondent to "sit down and figure out what she wants to do." They talked about respondent not taking on a different job that had a high volume of work or involved cases that were triggering. Respondent had taken on a job at a private firm and there was improvement because respondent was "much happier and felt that she was finally doing something that was meaningful" to respondent. Respondent was assisting with class action litigation related to the Boy Scouts of America and Monsanto. They talked

about the differences in those cases in comparison to cases she had worked on at the District Attorney's Office.

38. Dr. Woods reviewed Dr. Carroll's IME report indicating that respondent did not have PTSD or a psychological impairment that arises to substantial incapacity to perform her usual job duties. Dr. Woods disagreed with Dr. Carroll and opined that respondent does have PTSD and anxiety about returning to her work at the District Attorney's Office because of dealing with "violent cases" and "violent people." Dr. Woods remarked that working with violent cases and violent people was not required of respondent's job if the District Attorney's Office was willing to place respondent in another position.

39. Dr. Woods testified about respondent's physical condition of carpal tunnel syndrome. However, Dr. Woods testified as an expert in psychology and her testimony regarding any physical conditions was not considered.

### **CROSS-EXAMINATION OF DR. NANCY WOODS**

40. On cross-examination, Dr. Woods was asked if she was familiar with CalPERS's disability standard. She replied "no." She did not know if respondent met the disability standard for CalPERS and stated, "I don't know what that is."

### **TESTIMONY OF RESPONDENT AND HER SUPPORTING DOCUMENTS**

41. The following is a summary of the testimony of respondent, which is consistent with the supporting documents that she submitted, including a psychological QME by Dr. Deardorff, an orthopedic QME by Dr. David Wood, letters of support by her treating psychologist Dr. Nancy Woods, and various emails.

42. Respondent earned a bachelor's degree in political science from University of California, Los Angeles, in 1998, and a Juris Doctor from Loyola Law School in 2003. She knew she wanted to be a lawyer since she was 12 years old. She had an interest in helping women and children. She worked at a civil rights law firm when she was in law school. Her position at the District Attorney's Office came up after she graduated from law school. Her job duties varied depending on the assignment and level of her position. She was primarily a trial prosecutor where she prepared cases, met with witnesses, reviewed crime reports, listened to interviews of witnesses and victims, assessed strengths of cases, prepared and argued motions, prepared for trial, selected juries, and presented evidence. The position also entailed the following: parole-unit hearings that required traveling and preparation of memorandums ahead of parole hearings; homicide call-outs where you are called "in the middle of the night when someone is murdered and you appear and engage with detectives"; capital punishment cases; gang murder cases; and asset forfeiture cases.

43. Respondent was assigned to the gang unit after she had been a deputy district attorney for about one year. She handled misdemeanor cases involving simple assault and battery. She was then assigned to the "career criminal unit" where she prosecuted cases that had sentencing of 25 years to life for cases such as "take-down robberies." She also handled gang homicides, sexual assault, and child abuse cases. When she was at the "crux" of her career, she dealt with a handful of violent and complex cases within a two-year period. Transfers to different units happened every six months to one year, and later, after more experience, a transfer would happen every two years. She was awarded the "Felony Prosecutor of the Year" in 2006 and 2009. Another year, she was recognized as the "Community Hero of the Year" for a non-profit program she started within the District Attorney's Office.

44. Respondent testified about experiences related to her position as a District Attorney where she felt threatened. In 2006, she handled a take-down robbery case that had occurred at a Coco's restaurant and was a three-strikes case. When the guilty verdict was read, the defendant's sister yelled towards respondent, "I'm going to kill that fucking bitch." A deputy escorted her to her office and a report was sent to the Attorney General's Office for them to assess the threat. From 2006 through 2010, respondent handled five complex violent cases with some involving homicide call-outs when people had just been murdered. She had listened to a lot of jail calls between the Coco's defendant and his wife, and she knew the wife worked a few miles from respondent's house. She would notice a car driving by her house late at night, and she became hypervigilant and "started to wonder if all of this was worth it."

45. Another incident occurred in 2010 when respondent's boyfriend, also a deputy district attorney, had started prosecuting a Mexican mafia case. Her boyfriend's grandmother received a call asking if she was the boyfriend's wife and to tell the boyfriend that "he's dead." She was living with her boyfriend at the time and they would sleep with guns at the side of their bed. They had sensor lights on the side of the house and one time the lights went off and there was a Latino teenager who came to the door. She thought the boy could have a sales guy, but she had thoughts that "the boy was sent by the mafia to kill her." She testified that her "central nervous system was completely out of whack" and she was fearful.

46. Respondent was assigned to the sexual assault and child abuse unit (SACA), which was a "premier assignment" that included adult rape cases and child sexual assault cases involving young children and teenage boys. The subject matter was very challenging. She noticed when she went to a park she would think some of

the children were being molested. She would ask her colleagues and an investigator to summarize reports because she did not want to look at photos from the cases.

47. From 2013 to 2015, respondent was assigned to the Youth Accountability Team (YAT) that handled up to 100 minors who were on some type of probation and she collaborated with law enforcement and therapists to monitor the minors regarding issues of truancy and committing crimes. The YAT was "ultimately disbanded by the ACLU" because of victims being "treated wrongly" as there were a lot of low-income families with lots of trauma. She was struggling and beginning to distance herself from her work. She began to request to not conduct home visits/searches of the minors because being around "highly anxious kids" was taking a toll on her. She was also experiencing tingling in her fingertips and dry patches on the skin on her arms and legs.

48. In 2015, respondent made a "poor choice" and she was arrested for DUI. She let her supervisor know about her DUI. She was interviewed by investigators in the bureau who recommended she take an administrative leave and work from home in the crime prevention unit. She completed court-ordered requirements that included AA sessions. She continues to participate in AA. She was able to get her driver's license back.

49. Around 2015 to 2017, respondent started assisting with a non-profit in Orange County called OC Young Executives. This activity gave her meaning and purpose. She also began treating with a doctor or therapist in Orange County.

50. In 2017, respondent was injured in a volcano-boarding accident in Nicaragua. She had a "bad wipeout" that included volcanic ash on her forehead, a major concussion, and memory loss. She began asking for a different assignment at

work and submitted a "rotation request" in March 2017. She also asked for part-time work. She realized that she could not do it all. She was going to physical therapy for her scapula injury. She began getting rotated quite frequently including to the identity theft unit, asset forfeiture unit, and training. Each time she was rotated, she had to "lug her stuff."

51. In 2017, respondent began treating with Dr. Woods. She did some EMDR sessions because she was anxious driving at high speeds on the freeway after she was in the volcano boarding accident. She was having difficulty managing her work, which was more a part-time or job share situation. She took a demotion. She went in to work two times each week. It seemed like a lot to manage in 20 hours. She was having tingling in her fingers and above her elbow. Her hands would get stiff especially before she went on leave in March 2020, which is when she worked in her last rotation in the writs and appeals unit. She was anxious because she could not get her writing assignments done on time. She was having memory challenges and could not remember things just 10 minutes later.

52. In 2018, respondent was issued a performance improvement plan. She was sent calendar requests to meet with her supervisor but she did not confirm the requests. She would then get an email asking why she did not appear at the meeting. She would write back that she did "not appreciate their tone" and she was "going through a lot." This led to a meeting with the chief prosecutor and a managing prosecutor, which led to a performance evaluation and the performance improvement plan. She also missed court appearances and her supervisor complained they had to "pick-up" for her.

53. In 2019, respondent completed her performance improvement plan and things were going well, as she had established a better relationship with her

supervisor. Dr. Woods was concerned and encouraged her to take time off to “evaluate and assess.” Respondent had Dr. Woods write a letter recommending that respondent be granted a sabbatical. In March 2019, respondent received a six-week sabbatical from her job. She was able to recharge and get better, but she was not completely healed. She was thinking that she could use “much more time off to recover.”

54. In April 2019, respondent had moved to a new residence and she received a call from a phone number in Mexico. The caller asked if she was “Debra,” and said he was “Diablo from the Mexican mafia.” She then heard a woman’s voice that was “identical to her mom’s voice” that was screaming “they are going to kill me” and asking for help. Respondent stayed on the phone for less than two minutes to assess if it was a true threat. She reported the call to her supervisor, the chief prosecutor, and the bureau of investigations. About a month later, she received an email that she perceived as a threat. The email was from Y.B. and was sent to respondent’s personal Gmail account. Y.B. claimed to be the wife of the Coco’s defendant and Y.B. stated she wished her husband had access to respondent’s non-profit program when he was younger. An investigator with the bureau asked respondent to place a tracker on her car.

55. In June or July 2019, respondent was living with friends in Venice. The unit next door was an Airbnb unit and a party was being held one night in the next door unit. Around midnight, she asked the Airbnb renter to keep down the noise. She was home alone that night. Soon after she went to bed, “complete mayhem” broke out and she thought she was going to get shot. It was similar to a gang murder that she had prosecuted. The police came to the scene. There had been over 200 people in the unit next door. There were broken bottles and blood on women. She began having night terrors. The management at the complex was not stopping the activity at the

Airbnb unit next door and she was not getting along with her roommates. She moved to a new place where her car got broken into. On or about August 6, 2019, she sent an email to Stan Kaloustian, the Chief of the District Attorney's Office, informing him that she was experiencing PTSD due to the party riot incident.

56. In late 2019, respondent moved in with her mother and sister in order to get her "symptoms under control." Aside from the night terrors, she was waking up in the middle of the night with her hands asleep. She had "full blown carpal tunnel." Her goal was to get back to work full-time, but there was "no guarantee that she would get her full-time job back because she had agreed to the demotion."

57. In 2020, respondent's health was at "its lowest." She stayed living with her mother and sister for three months. She went back to living with her roommates and started "integrated treatments" on her hands and cupping during her lunch break. She underwent an ergonomic assessment at work and was given a standing desk. However, her Chromebook was at a lower level and her neck began hurting at C5 and C6. She started to ask to be removed from a "typing position." She was told the best unit for her was the writs and appeals unit. She was referred to an attorney for her workers' compensation claim for her carpal tunnel syndrome. She was typing about 80 percent in the writs and appeals unit. She started to use Dragon software, which is a speech recognition program, but she asked for an integration between Westlaw and Dragon and it never "came through."

58. In March 2020, respondent was placed on leave just before the Covid pandemic. She received a call from human resources indicating they were placing her on leave so she could "go through the workers' compensation process." She filed for disability benefits through her insurance company and short-term disability through the Employment Development Department (EDD), which she received for about six



months. Her wrists got better because she was "off the heavy typing," but she still could not complete her duties without "accommodations." She also had PTSD that involved having "triggers in the community." She witnessed a drowning outside her home and she ruminated and became depressed over the incident. In another incident, a homeless woman had her hands in her pocket and respondent was "desperately afraid that woman was going to take her hands out and shoot her." Respondent was hypervigilant.

59. In August 2021, respondent's mother became ill and her sister asked that respondent spend time with their mother. In November 2021, her mother was diagnosed with uterine cancer. Around that time, respondent relocated to San Diego to make a lifestyle change. Her mother was diagnosed with stage 4 cancer and placed in hospice. Respondent underwent her IME with Dr. Carroll about this time.

60. Thereafter, respondent amended her workers' compensation claim by adding a claim for PTSD. She was embarrassed about the PTSD. She experienced other incidents including when a guy was running by and reached towards his waistband and she froze. Another incident occurred when her sister dated a guy named "Soto" who had a tire shop and his brother was murdered by a gang member. Respondent became "obsessed" because she had a case with a person who had the same name "Soto." She also started to get "extremely nervous" when she drove at night.

61. In 2021, respondent was still hoping to get back to work at the District Attorney's Office. Her communications were shifts from the human resources department to the disability access office through the County. She received emails that included a list of jobs including a trial support lawyer. She was told that she could not perform the trial support lawyer position because her accommodation of 15-minute breaks was for all work and that would be a 25 percent reduction in productivity.

62. Around March 2022, respondent started asking who she needed to report to at the District Attorney's Office because she believed she was no longer on leave. She needed a 15-minute break every hour and she could not work on trauma-related cases. She also had limitations with pushing, pulling, and typing. She was concerned the 15-minute break accommodation would make her unemployable. She started asking for reinstatement of her position with accommodations.

63. On May 13, 2022, respondent's mother passed away.

64. In July 2022, CalPERS denied respondent's application for disability retirement. She had conversations with her employer about getting back to work and reinstatement of her position. On or about July 20, 2022, she emailed with Marina Martinez, a Senior Human Resource Analyst at the County Disability Access Office, who informed her the County would be sending a "cancellation notice" and CalPERS would not be filing any appeals or petitions. Essentially, she was being released from employment. She was startled. The County's position was that she could have returned to her full-time position with no accommodations. On or about October 11, 2022, respondent corresponded by email with Rebecca Lopez, a Human Resources Analyst II, and Faith Kim, both at the County Disability Access Office, who informed her that she must return to her position without any accommodations or she could continue with a job reassignment process. On or about October 26, 2022, respondent received an email from Lisa Pina, Director of Human Resources at the District Attorney's Office, stating, "You are not, in fact, on involuntary leave, especially in light of the July 15, 2022, letter from CalPERS that gave you the option to return to work (which you haven't pursued)." Respondent disagreed and testified that she made repeated requests for reinstatement.

65. In 2022, respondent began searching for other work. She asserted that she was “forced to step away and take another job.” She began working for the Law Office of Paul Mankin, which was a small boutique law firm where she handled child sexual assault cases involving the Boy Scouts. She prepared the cases for independent review. She had a lot of support staff to assist her and a remote lawyer who handled the motions. She also had support from a paralegal, investigator, and mental health expert, so she did “not have to be so close to the victim and hearing their story.” She handled a case involving Door Dash by filing some motions and complaints.

66. After respondent resigned from her position as a deputy district attorney, she continued to treat with Dr. Woods in bi-weekly therapy sessions. She also started to advertise that she could do criminal defense work. The business growth was a slow process as she would get referrals. Her efforts only resulted in one retainer for a domestic violence case that she is still handling. She understood it would take a couple of years before she could bring in a pipeline of referrals. She had the power to say “no” to a case and control her case load. When she spoke with Dr. Woods about the “notion of potentially being reinstated to her past job,” it was “always a hard no” because of the typing and high volume of violent cases. She testified, “I know it’s not feasible for my medical condition. It’s a hard pill to swallow because I’m strong. I realize I can’t go back.” She does not believe that she has the capacity to return to her position at the District Attorney’s Office without accommodations for typing, subject matter of violent cases, and volume of cases.

67. After the first day of hearing, respondent started a new job at Frantz Law Group in San Diego on August 23, 2023. She testified on the second day of hearing about her new employment as a litigation attorney handling wrongful death cases that involves reviewing police reports, death reports, and dash cam videos. After her first

day on the job, respondent began feeling triggers to the point where she left the room when a police dash cam video was played and photos were showed of an accident involving the death of a trucker. She had to speak with her new boss about her triggers. They decided that she would not work on any cases where someone was killed or injured in a fire, and she would instead work on appellate work. She has been productive in other ways by working on motions, briefs, and settlements.

### **CROSS-EXAMINATION OF RESPONDENT**

68. On cross-examination, respondent was asked if she advertises herself as an attorney who handles criminal matters and some violent crimes. She responded that "it would be fair" to agree to this. She was asked about the subject matter of the cases she worked on in the private firms including the domestic violence case and child sexual abuse cases. Respondent replied that she had 16 years of experience in criminal law and the support of the private firms, so she felt comfortable with the subject matter and believes her work was competent.

69. On cross-examination, respondent was asked about what she found to be triggering when she worked in the writs and appeals unit of the District Attorney's Office. She replied that she had "a lot of empathy for the cases" and she was "feeling a lot of compassion." She did not like hearing from her coworkers that the petitioners were not human. Her philosophy in these cases, and the same with the minors in the YAT unit, was this was not how rehabilitation should occur. She was also having problems with the work "compounding so much and the requirements of writing and typing" that she could not meet the deadlines. There was a lot of "nit picking" about her writing and work product, and her coworkers were adding to her stress.

70. On cross-examination, respondent was asked about her career projection at the District Attorney's Office. She replied that she went from a level 4T (trial team leader) to a level 4S, as a result of new leadership. In March 2017, she requested to work part-time and in September 2017, she was demoted to level 3 when they agreed to let her work part-time. She was asked if she was ever promoted again after she suffered her DUI conviction. She replied that she was not.

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. Absent a statutory presumption, an applicant for a disability retirement has the burden of proving by a preponderance of the evidence that he or she is entitled to it. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

### **Applicable Statutes**

2. Government Code section 20026 defines "disability" and "incapacity for performance of duty," for purposes of a retirement, to mean "disability of permanent or extended and uncertain duration" based on "competent medical opinion."

3. Government Code section 21150, subdivision (a), provides that a member who is "incapacitated for the performance of a duty" shall receive a disability retirement. Section 21151, subdivision (a), provides that such incapacitated member shall receive a disability retirement regardless of age or amount of service.

4. Government Code section 21152, states, in part:

Application to the board for retirement of a member for disability may be made by:

(a) The head of the office or department in which the member is or was last employed, if the member is a state member other than a university member.

[11] . . . [11]

(c) The governing body, or an official designated by the governing body, of the contracting agency, if the member is an employee of a contracting agency.

(d) The member or any person in his or her behalf.

5. Government Code section 21153 provides:

Notwithstanding any other provision of law, an employer may not separate because of disability a member otherwise eligible to retire for disability but shall apply for disability retirement of any member believed to be disabled, unless the member waives the right to retire for disability and elects to withdraw contributions or to permit contributions to remain in the fund with rights to service retirements as provided in section 20731.

6. Government Code section 21154 states, in part:

The application [for disability retirement] shall be made only (a) while the member is in state service, . . . On receipt

of an application for disability retirement of a member, other than a local safety member with the exception of a school safety member, the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for the performance of duty. On receipt of the application with respect to a local safety member other than a school safety member, the board shall request the governing body of the contracting agency employing the member to make the determination.

7. Government Code section 21156 provides that if the medical evaluation or other evidence demonstrates that an eligible member is incapacitated physically or mentally, then CalPERS shall immediately retire the member for disability. The determination of incapacitation shall be based on competent medical opinion.

### **Appellate Authority**

8. Disability is not an inability to perform fully every function of a given position. For nearly 40 years, the courts have consistently and uniformly held that Government Code section 20026, formerly Government Code section 21022, requires "substantial inability" to perform the applicant's "usual duties," as opposed to mere discomfort or difficulty performing those duties. (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 877.)<sup>2</sup> As such, when an employee can

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<sup>2</sup> The applicant in *Mansperger* was a game warden with peace officer status. His duties included patrolling specified areas to prevent violations and to apprehend violators; issuing warnings and serving citations; and serving warrants and making

perform his or her usual and customary job duties, even though doing so may be difficult or even painful, the employee is not substantially incapacitated and does not qualify for an industrial disability retirement. (*Id.* at pp. 886-887.)

9. In determining the ultimate question of whether an employee is substantially incapacitated from performing his or her usual duties, the board must consider both a job description and a list of job demands placed on an employee as well as the duties actually performed by the employee. (*Hosford v. Bd. of Administration* (1977) 77 Cal.App.3d 854, 860-861<sup>3</sup>; *Beckley v. Board of*

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arrests. He suffered injury to his right arm while arresting a suspect. There was evidence that Mansperger could shoot a gun, drive a car, swim, row a boat (but with some difficulty), pick up a bucket of clams, pilot a boat, and apprehend a prisoner (with some difficulty). He could not lift heavy weights or carry the prisoner away. The court noted that although the need for physical arrests did occur in Mansperger's job, they were not common occurrences for a fish and game warden. (*Id.* at p. 877.)

Similarly, the need for him to lift a heavy object alone was determined to be a remote occurrence. (*Ibid.*) In holding the applicant was not incapacitated for the performance of his duties, the court noted the activities he was unable to perform were not common occurrences and he could otherwise "substantially carry out the normal duties of a fish and game warden." (*Id.* at p. 876.)

<sup>3</sup> In *Hosford*, the court held that in determining whether an individual was substantially incapacitated from his usual duties, the courts must look to the duties actually performed by the individual, and not exclusively at job descriptions. *Hosford*, a California Highway Patrol Officer, suffered a back injury lifting an unconscious victim. In determining eligibility for a disability retirement, the court evaluated *Hosford's*



*Administration* (2013) 222 Cal.App.4th 691, 699.) Moreover, the employee must be presently incapacitated; that disability might occur in the future due to aggravation of the condition or disability that is a prospective probability does not satisfy the requirements of the Government Code. (*Id.* at p. 863; *Wolfman v. Board of Trustees* (1983) 148 Cal.App.3d, 196.) The above-referenced appellate authority is also discussed thoroughly in several precedential decisions.<sup>4</sup> (*In the Matter of the Application for Reinstatement from Industrial Disability Retirement of Willie Starnes and Department of California Highway Patrol*, Case No. 2530, OAH No. L-1999060537, effective January 22, 2000; *In the Matter of the Application for Disability Retirement of Theresa V. Hasan and Department of Corrections [Parole and Community Services Division, Region II]*, Case No. 2704, OAH No. N-1999100099, effective April 21, 2000; *In the Matter of the Application for Disability Retirement of Ruth A. Keck and Los Angeles*

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injuries according to the job duties required as a sergeant, as well as the degree to which any physical problem might impair the performance of his duties. Thus, the actual and usual duties must be the criteria upon which any impairment is judged. Generalized job descriptions and physical standards are not controlling, nor are actual but infrequently performed duties to be considered. The *Hosford* court found although Hosford suffered some physical impairment, he could still substantially perform his usual duties. The court rejected Hosford's contention that he was substantially incapacitated from performing his usual and customary duties because his medical conditions created an increased risk of future injury.

<sup>4</sup> An agency may designate a decision as precedential authority that may be relied upon in future decisions if it contains a significant legal or policy determination of general application that is likely to recur.

*County Schools [Glendora Unified School District], Case No. 3138, OAH No. L-19991200097, effective September 29, 2000.)*

**Competent Medical Opinion**

10. CalPERS makes its determination whether a member is disabled for retirement purposes based upon “competent medical opinion.” That determination is based on evidence offered to substantiate the member’s disability. (*Lazan v. County of Riverside* (2006) 140 Cal. App. 4th 453, 461, distinguished on other grounds.)

11. Evidence Code section 801 states:

If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:

(a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and

(b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion.

12. The determinative issue in each case must be whether the witness has sufficient skill or experience in the field so that his testimony would be likely to assist

the trier of fact in the search for the truth, and “no hard and fast rule can be laid down which would be applicable in every circumstance.” (*Mann v. Cracchiolo* (1985) 38 Cal.3d 18, 37-38.)

13. A properly qualified expert may offer an opinion relating to a subject that is beyond common experience, if that expert’s opinion will assist the trier of fact but the expert’s opinion may not be based on assumptions of fact that are without evidentiary support or based on factors that are speculative or conjectural, for then the opinion has no evidentiary value and does not assist the trier of fact. (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 529-530.)

14. Government Code section 11513, subdivision (d), states, in part: “Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.”

15. Unless admissible over objection in civil actions, hearsay evidence shall not be sufficient in itself to support a finding in an administrative proceeding. (*Carl S. v. Commission for Teacher Preparation & Licensing* (1981) 126 Cal.App.3d 365,371.) Hearsay evidence is not competent evidence that can independently support a finding. (*McNary v. Department of Motor Vehicles* (1996) 45 Cal.App.4th 688.)

16. Determining both the nature of respondent’s orthopedic and psychological conditions, and whether any of those conditions incapacitated her from the performance of her duties, is sufficiently beyond common experience such that expert testimony is required. Respondent’s treating psychologist, Dr. Woods, testified as a medical expert, and CalPERS’s IME orthopedist, Dr. Kelly, and CalPERS’s IME psychologist, Dr. Carroll, also testified as medical experts. The other IME evaluations

that were conducted for respondent's workers' compensation claim were reviewed by Dr. Woods, Dr. Kelly, and Dr. Carroll, who provided testimony about these evaluations. As such, the summaries of these other IME evaluations were received as administrative hearsay, and the summaries were only considered to the extent they supplemented and/or explained other non-hearsay evidence.

## **Evaluation**

17. In evaluating expert testimony, the trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.* at pp. 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)

18. In order to qualify for disability retirement, respondent must demonstrate with competent medical opinions that she was permanently disabled or substantially incapacitated, due to orthopedic and/or psychological conditions, from performing the usual and customary duties of a Deputy District Attorney when she filed her application. Here, respondent's treating psychologist, Dr. Woods, opined respondent was incapacitated from performing her job duties as a result of a psychological condition. However, CalPERS's medical experts, Dr. Carroll and Dr. Kelly, ultimately concluded that respondent was not incapacitated from performing her job duties as a result of any orthopedic and/or psychological condition. The opinions of Dr. Carroll and Dr. Kelly are consistent with the overall record and afforded greater

weight than the opinion of Dr. Woods who was not even familiar with the disability standard for CalPERS. Thus, respondent failed to meet her burden of proof and her application must be denied.

19. Respondent alleges she had PTSD, a cervical spine condition, and carpal tunnel syndrome, which caused her to not be able to perform her usual and customary duties as a deputy district attorney. Respondent asserted she was affected by her exposure at work to violent photos and videos of crimes, violent crime scenes, and dealing with victims for cases involving gang activity, murders, child sexual assault, adult sexual assault, and take-down robberies – among other cases. She also alleged that she struggled with dealing with minors in the YAT unit, the amount of typing in all of the units, and spinal symptoms related to the ergonomic arrangement of her desk and computer.

20. However, this record does not fully support respondent's assertions that PTSD, and/or symptoms of anxiety, depression, or dysthymic disorder caused her to be substantially incapacitated. The same can be said for carpal tunnel syndrome and any orthopedic complaints. She was moved to different units within the District Attorney's Office in an effort to accommodate her, yet, she continued to assert that she could not perform her job. She complained of mental "triggers" and problems with her hands and typing even after she was moved to the writs and appeals unit. Respondent acknowledged there were other reasons – not related to any physical and/or mental conditions – as to why she could not continue to work as a deputy district attorney. She testified about how her philosophies were not in line with the District Attorney's Office in the writs and appeals cases, when dealing with the minors in the YAT unit, and with the volume of the cases that were assigned. What is abundantly clear from respondent's testimony and other evidence in the record is that respondent simply

began to no longer care for her job and she no longer wanted to do it. She was also demoted after her DUI conviction. Respondent essentially did not like how the office was being run, and her disability claims followed. Respondent's disagreement regarding how the District Attorney's Office was run, however, is not the same as being substantially incapacitated from performing her job duties.

21. Dr. Carroll ultimately found that while respondent had symptoms of anxiety and depression, she did not have a diagnosis of PTSD. Dr. Carroll's conclusion is supported by the fact that respondent was able to resign from her position at the District Attorney's Office and open her own law office and market her legal services as a criminal defense attorney by having a website that highlighted her experience and results with murder cases, sexual assault cases, and many other types of criminal cases.

22. Moreover, by the conclusion of the hearing, respondent had already been employed by two different law firms where she handled a domestic violence case that she carried over from her own private practice, she handled a case involving the accident and death of a truck driver, and she handled child sexual assault class action cases involving the Boy Scouts. She was also able to write motions and briefs, and handle settlements. Respondent's ability to market herself at her own firm and highlight her criminal law experience and be employed by private firms in doing criminal defense work is not consistent with having PTSD, carpal tunnel syndrome, and a spinal condition, such that she was substantially incapacitated from performing the job duties of a deputy district attorney. In fact, it is just the opposite.

23. Furthermore, as discussed in *Mansperger, supra.*, an applicant is not incapacitated when he or she is able to perform their work duties even if doing so "may be difficult or painful." While respondent's mental triggers might cause her difficulty or stress with performing her work duties, her fear that she might be

triggered when working on certain cases is speculative and does not qualify her for disability retirement.

24. Based on the above, CalPERS's determination that respondent was not permanently disabled or substantially incapacitated, due to any orthopedic and/or psychological conditions, from performance of her duties is affirmed.

25. These conclusions are based on the entirety of the record. All arguments and evidence in the record but not mentioned in this decision were considered. All evidence and arguments contrary to this decision have been rejected.

### **Cause Exists to Deny the Application**

26. Cause exists to deny respondent's application for disability retirement based on the claimed orthopedic and psychological conditions. Respondent failed to establish by a preponderance of the evidence that she was permanently disabled or substantially incapacitated from performing her usual and customary duties as a Deputy District Attorney, Level III, for the County, based on orthopedic conditions (carpal tunnel syndrome and cervical spine sprain/strain) and a psychological condition (PTSD), when she filed her application for disability retirement.

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## ORDER

The application for disability retirement filed by respondent Debra A. Postil on December 30, 2021, is denied. CalPERS's denial of respondent Debra A. Postil's application, due to orthopedic conditions (carpal tunnel syndrome and cervical spine sprain/strain) and a psychological condition (PTSD), is affirmed.

DATE: November 28, 2023



JAMI A. TEAGLE-BURGOS

Administrative Law Judge

Office of Administrative Hearings