

ATTACHMENT C
RESPONDENT'S ARGUMENT

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

In the Matter of the Application for
Disability Retirement of:

ANGELICA TORALBA,
Respondent.

) Case No. 9060

) OAH No. 2012050116

) RESPONDENT'S ARGUMENT
) AGAINST THE PROPOSED
) DECISION OF THE
) ADMINISTRATIVE LAW JUDGE

ARGUMENT AGAINST THE PROPOSED DECISION
OF THE ADMINISTRATIVE LAW JUDGE

Administrative Law Judge Eric Sawyer's (hereinafter "ALJ") decision is not supported by substantial evidence and thus, should not be adopted by the Board. The evidence is quite clear as to the extent of the limiting/disabling nature of Respondent's impairments; evidence that the ALJ did not properly consider. While the ALJ opined that "Respondent's primary health problem is fibromyalgia" and that Respondent's various physicians were unsure what exactly Respondent suffered from until 2006 (*See Proposed Decision, p. 4, ¶ 18*), the ALJ erred in not considering the totality of Respondent's physical and/or mental complaints vis-a-vis the respective diagnosis she received. Specifically, the ALJ erred in focusing on one of Respondent's diagnosis and ignoring all others, his dismissal of the opinions/findings

1 of Respondent's treating/examining physicians, and his reliance on the report of one-
2 time examining physician Mark Borigini, M.D. (which is internally inconsistent).

3 For example, the record is quite clear that Respondent has continually
4 complained of pain in her wrist joints, hands, and/or fingers (*See e.g.*, Exhibit A
5 reports dated 11/05/05, 07/27/07, & 01/05/09) and that her hands would cramp up
6 causing her difficulties with her activities of daily living (*See e.g.*, Exhibit A report
7 dated 05/23/08). Also, Respondent has complained of problems with her shoulders,
8 arms, and/or elbows (*See e.g.*, Exhibit A reports dated 11/05/05, 10/01/08, 10/29/08,
9 01/03/11, and 07/26/11). These problems have caused Respondent to have
10 difficulties completing her activities of daily living because of problems with her
11 upper extremities (*See e.g.*, Exhibit A report dated 05/23/08 and Exhibit G report
12 dated 12/28/06).

13 Objective testing consistently showed Respondent had tenderness in her
14 upper extremities (*See e.g.*, Exhibit A reports dated 11/05/05, 07/27/07, 05/23/08, &
15 01/05/09; *see also* Exhibit C report dated 10/26/06 where Dr. Parmer noted
16 Respondent had tenderness over her cervical spine) and had weakness with loss of
17 muscle strength in her bilateral upper extremities (*See e.g.*, Exhibit A report dated
18 07/05/12; *see also* Exhibit G reports dated 12/28/06 & 01/16/07, Exhibit I report
19 dated 01/11/07, and Exhibit J report dated 05/18/12). Respondent also suffered from
20 numbness, paresthesia, and weakness in her upper extremities (*See e.g.*, Exhibit G
21 report dated 12/28/06) along with restricted range of motion (*See e.g.*, Exhibit A
22 report dated 07/21/06). Also, Dr. Borigini even noted Respondent suffered from
23 diminished grip strength in her upper extremities (*See* Exhibit 5, p. 3 (which is
24 inconsistent with his conclusion that Respondent could perform fine manipulation
25 with her hands (*See Id.* at pp. 4-5)). Thus, Respondent's limitations with her upper
26 extremities are well-chronicled.

1 In addition to the complaints in her upper extremities, Respondent has
2 consistently noted problems with her lower extremities (*See e.g.*, Exhibit A report
3 dated 08/11/06 & 07/27/07). For example, Respondent has problems sitting for any
4 length of time (*See e.g.*, Exhibit A reports dated 05/23/08, 06/24/08, & 07/28/08; *see*
5 *also* Exhibit J report dated 05/18/12 and Exhibit 5, p. 2) and/or standing (*See e.g.*,
6 Exhibit A report dated 01/05/09). According to Respondent, her only real relief
7 comes with resting in bed (*See e.g.*, Exhibit A report dated 08/29/08). In fact,
8 Respondent had to use a wheelchair (*See e.g.*, Exhibit A report dated 01/05/09) or a
9 walker (*See e.g.*, Exhibit K report dated 07/05/12) to ambulate because of the
10 problems she had with falling due to her inability to walk effectively (*See e.g.*,
11 Exhibit K report dated 04/05/12).

12 Consistent with Respondent's complaints, the various treating and examining
13 physicians have noted Respondent's difficulties ambulating and sitting (*See e.g.*,
14 Exhibit A report dated 05/23/08). Objective testing of the lower extremities
15 confirmed that Respondent suffered from decreased muscle strength (*See e.g.*, Exhibit
16 K report dated 09/09/09; *see also* Exhibit G report dated 12/28/06, Exhibit I report
17 dated 01/11/07, and Exhibit J report dated 05/08/12) and had limited range of motion
18 in the lower extremities (*See e.g.*, Exhibit A report dated 04/21/08). In fact, Dr.
19 Borigini also noted that Respondent suffered from "diffuse pain of the soft tissue of
20 the bilateral calf area," (Exhibit 5, p. 3) as well as suffered from tender points of the
21 lower extremities (*See Id.* at p. 4). Thus, Respondent's limitations with her lower
22 extremities are well-chronicled.

23 Lastly, the ALJ erred in dismissing the severity of Respondent's
24 psychological impairment. Specifically, the ALJ opined that there is no
25 documentation submitted that indicated Respondent's depression incapacitated her
26 mentally for the performance of her duties (*See Proposed Decision*, p. 4, ¶ 18). This
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1 simply is not true. For example, Respondent was repeatedly noted to appear
2 depressed and/or anxious by the various physicians who treated her (*See e.g.*, Exhibit
3 I report dated 01/11/07 and Exhibit J report dated 05/08/12). Respondent was
4 diagnosed with Major Depressive Disorder and given a Global Assessment of
5 Functioning (hereinafter “GAF”) score of 45 (*See e.g.*, Exhibit F report dated
6 03/28/11). A GAF score in the range of 41-50 is indicative of a person who has a
7 “serious impairment in social, occupational, or school functioning” and thus, is
8 “unable to hold a job” (American Psychiatric Association *Diagnostic and Statistical*
9 *Manual of Mental Disorders*, Revised 4th Ed., p. 34, 2000).

10 As a result, Respondent has presented evidence both physically and/or
11 mentally that she could not perform the duties of her past work with Delano District,
12 or any other work for that matter.

14 CONCLUSION

15 As the California Supreme Court stated in *Gorman v. Cranston*, 64 Cal. 2d
16 441, 444 (1966) “It has long been settled in this State that pension legislation is to be
17 liberally construed” in favor of the employee. In fact, pension law is intended to
18 protect the pensioner against economic insecurity. and thus, “in order to confer the
19 benefits intended, such legislation should be applied fairly and broadly” (*Id.*).

20 In this case, Respondent has provided ample evidence from various sources
21 chronicling her physical and/or mental impairments; impairments that preclude her
22 ability to perform the essential duties of her work with Delano District. Specifically,
23 it is well-chronicled that Respondent has been noted to suffer from weakness and
24 fatigue (*See e.g.*, Exhibit J report dated 05/18/12; *see also* Exhibit A reports dated
25 11/05/05, 11/10/05, 04/25/06, 05/31/06, 06/24/08, 10/29/08, 01/05/09, & 01/05/09,
26 and Exhibit K report dated 04/05/12 where Dr. Abalos consistently noted

1 Respondent's complaints of fatigue and/or weakness). Respondent has been
2 diagnosed with fibromyalgia, low back pain possibly secondary to lumbar and
3 sacroiliac myofascial pain syndrome, and bilateral occipital neuralgia with headaches
4 (*See e.g.*, Exhibit J report dated 05/18/12), along with carpal tunnel syndrome (*See*
5 *e.g.*, Exhibit A reports dated 01/05/09, 05/15/09, & 07/17/10) and major depressive
6 disorder (*See e.g.*, Exhibit F report dated 03/28/11; *see also* Exhibit K reports dated
7 02/21/11, 05/03/11, 06/14/11, 06/25/11, 07/26/11, 09/26/11, 10/11/11, 11/29/11,
8 01/05/12, 02/23/12, 04/05/12, 05/10/12, 06/28/12, & 07/05/12). In fact, despite the
9 various treatment Respondent has received, her condition has been poorly controlled
10 (*See* Exhibit D report dated 06/21/07; *see also* Exhibit J report dated 05/18/12 where
11 Dr. Grandhe noted that Respondent's condition did not respond to the various
12 prescribed treatments).

13 In addition, Respondent's various diagnosis are all consistent with
14 Respondent's subjective complaints (*See e.g.*, Exhibit A reports dated 11/03/05,
15 11/05/05, 11/10/05, 03/13/06, 04/25/06, 09/11/06, 07/27/07, 10/18/07, 04/21/08,
16 10/29/08, 01/05/09, & 05/29/10; *see also* Exhibit K reports dated 02/21/11 &
17 04/04/12). Not only that, these diagnosis and complaints are also consistent with
18 Respondent's stated reason (*See* Exhibit 1) and Dr. Abalos adopted opinion
19 (*See* Exhibit L; *see also* Exhibit A report dated 10/18/07 noting 'disability') that
20 Respondent cannot work and is disabled.

21 As a result, the preponderance of the evidence supports Respondent's claims
22 and thus, the proposed decision of the administrative law judge should not be
23 adopted. Instead, payment of benefits is warranted in this case and in the alternative,
24 the case should be sent back to the administrative level for further clarification of the
25 issues.

1 Dated: February 6, 2013

Respectfully submitted,

3 /S/ - Judith S. Leland
4 JUDITH S. LELAND
Attorney for Applicant

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