

ATTACHMENT C
RESPONDENT'S ARGUMENT

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Sent By US Express Mail & Fax

Re: MILAGROS OLIVER
CASE NO: 9002
OAH NO: 2012021210

Gentlepersons:

Enclosed please find Respondent's Brief to be included in the record in the above-entitled matter.

Your consideration is greatly appreciated.

Sincerely yours,

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MTK/TP:tp
Enclosure

cc: Rory J. Coffey, Esq., CalPERS



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6 Attorney for Respondent

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

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11 In the Matter of the Application for) Case No. 9002
Disability Retirement of:)
12) OAH No. 2012021210
13 Milagros Oliver,)
14 Respondent.) RESPONDENT'S ARGUMENT
AGAINST THE PROPOSED
15) DECISION OF THE
ADMINISTRATIVE LAW JUDGE

16
17 **ARGUMENT AGAINST THE PROPOSED DECISION**
18 **OF THE ADMINISTRATIVE LAW JUDGE**

19 The decision of Administrative Law Judge Julie Cabos-Owen (hereinafter
20 "ALJ") is not supported by substantial evidence and thus, should not be adopted by
21 the Board. The evidence produced before the ALJ is quite clear as to the extent of the
22 limiting/disabling nature of Respondent's impairments; evidence that the ALJ did not
23 properly consider. Thus, the ALJ's decision should not be adopted for the following
24 reasons:

- 25
26 **1) The ALJ erred in evaluating the medical evidence of record.**
27 **2) The ALJ erred in evaluating Respondent's credibility.**
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1 June 18, 2005, due to pain, weakness and infection” (*Id.* at p. 9 of May 15, 2007,
2 report).

3 Consistent with Dr. Frykman opining that Respondent cannot perform the
4 usual and customary duties of her past relevant work as a registered nurse with the
5 Department of Corrections, other evaluating and/or treating physicians have made the
6 same conclusion: that Respondent was unable to work due to the nature of her
7 impairment(s) (*See e.g.*, Exhibit Q, p. 5 of report dated February 2, 2006, from
8 Stanley J. Majcher, M.D.; *see also* Exhibit P, p. 16 of report dated November 8, 2007,
9 from Prakash Jay, M.D., and Exhibit O report dated April 30, 2007, from Kaiser
10 Permanente).

11 In support of these numerous statements that Respondent was unable to
12 perform her past relevant work as a registered nurse with the Department of
13 Corrections, various physicians also noted, objectively, that Respondent had pain and
14 swelling of the right third digit joint in her hand (*See* Exhibit R, p. 7 of report dated
15 February 7, 2006) and that Respondent suffered from edema of the right middle finger
16 and had significant deficit in flexing the right middle finger (*See* Exhibit O, report
17 dated November 2, 2005). Thus, based on these findings, Respondent was limited to
18 no use of her right hand, no direct contact with others, and no lifting with her bilateral
19 upper extremities (*See* Exhibit O, report dated November 25, 2005). Thus, while the
20 ALJ narrowed in on the various Jamar tests in the record, she neglected to note that
21 *several* various medical professionals all opined the same thing: that Respondent was
22 unable to perform the usual and customary duties of her past relevant work as a
23 registered nurse with the Department of Corrections.

24 As a result, the ALJ erred in evaluating the medical evidence of record.

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1 protect the pensioner against economic insecurity and thus, “in order to confer the
2 benefits intended, such legislation should be applied fairly and broadly” (*Id.*).

3 In this case, Respondent has provided ample evidence from various sources
4 chronicling her physical and/or mental impairments; impairments that preclude her
5 ability to perform the essential duties of her past relevant work as a registered nurse
6 with the Department of Corrections. The preponderance of the evidence supports
7 Respondent’s claims and thus, the proposed decision of the ALJ should not be
8 adopted. Instead, payment of benefits is warranted in this case and in the alternative,
9 the case should be sent back to the administrative level for further clarification of the
10 issues.

11 As a result, Respondent requests that the Board not adopt the Proposed
12 Decision of ALJ Cabos-Owen.

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14 Dated: August 7, 2013

Respectfully submitted,

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16 /s/ - Judith S. Leland
17 JUDITH S. LELAND
18 Attorney for Applicant
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