

ATTACHMENT C
RESPONDENT'S ARGUMENT

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8 Attorneys for Respondent – Annie Acheta

9 BEFORE THE
10 BOARD OF ADMINISTRATION
11 CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM

12 IN THE MATTER OF THE APPLICATION FOR) OAH No. 2013120220
13 DISABILITY RETIREMENT OF:) AGENCY CASE No: 2012-0531
14)

15 ANNIE ACHETA,
16)

17 Respondent,
18)

19 vs.
20)

21 DEPARTMENT OF DEVELOPMENTAL)
22 SERVICES,)
23 FAIRVIEW DEVELOPMENTAL CENTER,)
24)

25 Respondent.
26)
27)

RESPONDENT’S ARGUMENT

28 *ALJ Misinterprets the Law Regarding the Weight
to be Afforded Workers’ Compensation*

There is a common misconception that workers; compensation awards, findings and reports are not to be considered in a disability retirement claim due to the lack of privity between disability retirement law and workers’ compensation law. This belief is unfounded.

It is true, however, that the Retirement Boards are *not bound* by the workers’ compensation documents or orders. It is important to distinguish between the two. A review of page 8 of the ALJ leads one to reasonably believe that the ALJ has misinterpreted the law. The ALJ seems to be saying that, because the workers’ compensation law and disability retirement law have differing definitions of “disability,” a workers’ compensation opinion is not of value in determining disability on a retirement case. That is not the law.

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1 ance of the evidence.

2 Per California Code of Civil Procedure 1094.5, a Findings must be supported by the
3 evidence. The Decision must be supported by adequate findings and rationale. Topanga Association
4 v. County of L.A., (1974) 11 Cal.3d 506. The ALJ's Proposed Decision fails the test and any
5 decision adopting it will fail under Court review.

6 The facts are misstated. The law misinterpreted.

7 This Proposed Decision should be rejected and a Decision granting disability should be
8 issued.

9 The Court in Topanga (supra) explains the sequential evaluation to be followed in preparing
10 a Decision. First, there must be statement of facts stemming from the evidence. In our case, the
11 facts are incorrectly stated...there was not a prophylactic work restriction imposed by Dr. Haghi.
12 Secondly, the Finding of Facts must flow logically and organically from the evidence. In our case,
13 that cannot have happened because the ALJ decision is, in large part, based upon inaccurate facts
14 and misapplied law.

15 The ALJ dismisses out of hand the testimony from witness Mark Swanson. The ALJ finds
16 the testimony from Mr. Swanson to be of little value because his opinion is not "competent medical
17 opinion." This is mystifying. Of course, the testimony from Mr. Swanson was not presented under
18 the pretext of being medical testimony. Mr. Swanson was presented as a witness with first-hand
19 knowledge of the physical demands on the job. Swanson was Ms. Acheta's supervisor. He did not
20 testify as to the appropriate restrictions for an individual with medical impairments; which would
21 be within the purview of the medical experts. He merely advised as to how restrictions imposed by
22 the doctors would affect an individual's ability to perform the duties of a Senior Psychiatric
23 Technician. His testimony is, therefore, pertinent and appropriate. The ALJ's decision to not
24 consider the testimony is improper. The ALJ offers no legal support or authority for the proposition
25 that third party witness testimony is to be disregarded because the witness is not a medical doctor
26 when the witness is testifying regarding the physical duties and demands of the job. At the very
27 least, this case should be remanded to allow the ALJ to review and assess the testimony from Mr.
28 Swanson.

1 *CONCLUSION*

2 It is respectfully requested that the Proposed Decision be rejected and that the Applicant be
3 granted her Disability Retirement.

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5 Date: October 5, 2015

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8 By: DANNY T. POLHAMUS
9 Attorney for Respondent

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PROOF OF SERVICE BY MAIL

Re: Annie Acheta – CalPERS Disability Retirement Application
OAH No. 2013120220
Agency Case No. 2012-0531

I am employed at CANTRELL, GREEN, 444 W. OCEAN BLVD., SUITE 400, LONG BEACH, 90802. in the County of Los Angeles, California. I am over the age of 18 years and not a party to this cause. I am readily familiar with the law office's practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence would be deposited with the United States Postal Service this same day in the ordinary course of business.

The following documents are being served:

RESPONDENT'S ARGUMENT

These documents are being served on:

Cheree Swedensky, Assistant To The board
CalPERS Executive Office
P.O. Box 942701
Sacramento, California 94229-2701

The correspondence was placed for deposit in the United States Postal Service in a sealed envelope placed for collection and mailing this day following ordinary business practices at the above place of business.

I declare under penalty of perjury that the above is true and correct. Executed on October 6, 2015 at Long Beach, California.



ANDREW CANTRELL