

ATTACHMENT C
RESPONDENT'S ARGUMENT

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In the Matter of the Application for Disability Retirement of May Lloyd, Respondent
and California Department of Justice, Office of the Attorney General, Respondent
Case No. 2014-0423 - OAH No. 2014110143

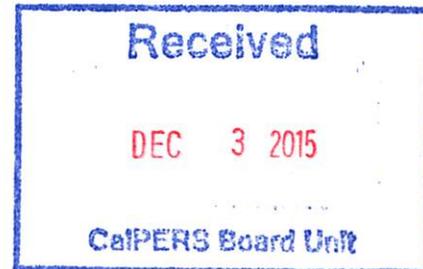
This is May Lloyd, Respondent's written argument against the Proposed Decision by
Mary Agnes Matyszewski, ALJ's Order denying my application for disability retirement, dated
October 20, 2015.

ISSUE

Was May Lloyd substantially incapacitated from performing the regular and customary
duties of a Senior Legal Analyst due to emotional and mental stress?

FACTUAL FINDINGS

1. Undisputed
2. Undisputed
3. Undisputed
4. Undisputed
5. Undisputed
6. Undisputed



7. Undisputed-- Please refer to Respondent May Lloyd's Exhibit # 13 Please note Respondent CalPERS submitted a California Department of Human Resources Job Duties for Senior Legal Analyst but this is not the specification used for the Employment Section.
8. Undisputed-Disputed in part- All my medical doctors were advising due to serious health conditions and ongoing severe depression a new work environment was advisable. I had requested numerous times through conversations with my direct supervisors for a "fitness for duty request" but they insisted they could only offer me a "worker's compensation request form" due to the ongoing hostile work environment, I felt I would be retaliated against if I filed for worker's compensation. I was afraid of losing my job but didn't know what to do and was aware that I was going to be demoted, suspended or terminated so I kept trying to make it work.
9. Undisputed
10. Disputed- Also, Dr. Glassman misrepresented I was "pursuing other employment options", he asked me if I could function in a better work environment and I said "I don't

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think so” and if I was not sick and depressed feeling I would rather work in a different work environment. Also, Dr. Glassman indicates I was not substantially incapacitated from performing my usual duties as a Senior Legal Analyst, but had not reviewed my job description or never asked me one specific question as to what my normal duties were. I was no longer working in my capacity as a Senior Legal Analyst perhaps on a broad scope under some general direction I was performing some of the duties, but as the job description (exhibit 13) indicates a Senior Legal Analyst works independently and I was not working independently, all my work was and had been reviewed by my supervisor or attorneys unlike before the depression and counseling started in 2011. During court testimony Dr. Glassman indicated he used words to “tease me” into talking about my work situation. Dr. Glassman’s over-all evaluation took place within less than thirty minutes-Dr. Glassman testified the IME lasted one hour, but had no documentation to support how long the IME lasted. Dr. Glassman wrote only specific words he took from me and formulated his own complete conclusions. Again, his technique he testified to was he “teased” the answers out of me and misrepresented the entire meaning of what I was trying to say since he stopped the questioning and moved onto another question. However, when Dr. Glassman did ask me if I could perform the duties if in a new work environment I replied “I don’t think so”.

Dr. Glassman did not review all my medical records he indicated I was only on Valium and taking an inhaler for panic attacks. If Dr. Glassman had reviewed all my medical records from Dr. Denysiak, Dr. Hall, Dr. Morris and Dr. Guterrez the medications I was taking since filing my application for disability retirement in January 2013 was: Escitalopram 20 mg, Diazepam 5 mg, Cymbalta 30 mg daily x7 then 60 mg daily Wellbutrin XL 150 mg, Bupropion 150 mg, Lexapro 20 mg., See Dr. Hall evaluation (CalPERS) Exhibit 11, pgs., 2, 4; Morris, Evaluation Lloyd’s Exhibit #1 pg. 12.

11. Undisputed- I have a history of depression therefore, although the work stressors brought on another episode of severe depression there is a history of depression. Dr. Glassman indicated “I was coping better” however, I indicated I had good days and bad days but due to the increase absences since 2011 through October 25, 2013 the day of my service retirement I never worked a full 40 hour work week due to my depression. In Dr. Glassman’s IME report dated July 22, 2013 he indicated “She never had any mental health treatment prior to 2008” Dr. Glassman in his supplemental report dated December 2013 could have indicated if he read Dr. Hall’s report dated August 23, 2013 (CalPers exhibit 11, pg. 2, and pg.4) “post-partum depression did therapy”, “past history of depression”.

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12. Disputed- Please see Lloyd's exhibit #5. Although Dr. Glassman indicated his opinion that I was not "substantially incapacitated from the performance of her usual duties" Dr. Glassman wrote checked "No" and handwrote "She has been working!" I had been service retired since October 25, 2013, pending my disability appeal. Also, more importantly Dr. Glassman testified he had not reviewed all additional medical records, including Dr. Hall and Dr. Guterrez's reports, he only replied to reviewing Dr. Morris's report.
13. Disputed – see #12 above.
14. Undisputed
15. Undisputed
16. Undisputed
17. Undisputed
18. Undisputed
19. Disputed- Dr. Glassman spent about half an hour with me at the IME conducted on July 22, 2013 and the report is also dated on July 22, 2013. During his testimony he claimed the IME lasted 1 hour. Also, at during his testimony he indicated he "Teased the answers out of me" which I feel misrepresented what I was feeling. Again, he had every opportunity to review additional reports prepared by Dr. Hall and Dr. Guterrez, but did testified he did not review those additional doctor's reports.
20. Undisputed and Disputed in part- I was on new medication which made me feel temporary better but I again declined into a deeper depression which prevented me from working altogether by October 2013 when I filed for service retirement pending my disability appeal. The most days I worked in 2013 were 22 days in the month of July and those days were not a total of 8 hours a day. Lloyd's Exhibit 7
21. Undisputed- Lloyd's Exhibit 8
22. Undisputed- Lloyd's Exhibit 22 "Independently performs all duties" I was not independently performing my duties since 201, all my work even simple correspondence was being reviewed by supervisors or attorneys prior to being sent unlike during my prior years working in the capacity of a Senior Legal Analyst.

23. Undisputed- Drs. Gutierrez, Hall, Miller Denysiak and Morris gave Lloyd a score of 50 all doctors indicated I was unable to continue to work or indicated I was substantially
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24. Incapacitated from performing the normal job duties. Only Dr. Glassman gave a Global Assessment of 75.

25. Undisputed

26. Undisputed

27. Undisputed

28. Undisputed

29. Undisputed

30. Disputed- Dr. Glassman only failed to read all medical records. His IME only lasted 30 minutes although he testified it lasted 1 hour. He did not know what medications I was taking or had been taking. He did not realize I was working less than 40 hour a week since 2011 and within those less than 40 hours a week most of those months were working on a part-time basis of 5 hours a day; therefore, I was not working full time from 2011 until I filed for service retirement pending disability appeal on in October 2013. Due to the extreme absences due to my severe depression I could not get or stay at work which made my supervisors give me low performance evaluations and threatening me with an adverse action. My absences were a direct result of my depression and mental and emotional stress which made resulted in me being substantially incapacitated from performing my duties as a Senior Legal Analyst as the job description indicated should be independently performing those duties as a Senior Legal Analyst; therefore, I was not performing to that level or functioning adequately.

31. Disputed- The various medications would temporarily make me feel better on days but then would I would be debilitated and unable to go to work the next day, the next week, or the next month this continued for two years from 2011 through 2013. All doctors indicated the work environment contributed to my depressive mood, and I myself felt it started my depression, but after many years I believe it was medical issue more than a situational issue. I've suffered many years up until today with depressive moods.

LEGAL ARGUMENT

Board of Administration of the California Public Employees' Retirement System did not apply the correct legal standards in determining that a California Highway Patrol officer was not eligible for a disability pension, where it measured the officer's usual job duties. Beckley v. Bd. of Admin. of CalPERS (2013, 1st Dist) 2013 Cal App LEXIS 1045.

The line between "unable" and merely "unwilling" can be fine. (See Haywood, supra, 67 Cal.App.4th 1292 [**357] [79 Cal.Rptr.2d 749].)produced a genuine personal
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fear...to render him dysfunctional, that, wherever he went, his record would follow, and he would face unbearable ostracism, threats, and lack of backup at time agree he may secure a disability pension.

The Retirement Board further found Bianchi suffered from psychiatric disabilities which did permanently incapacitate him, but concluded the incapacitating psychiatric disabilities were not the result of his employment as a police officer, but were instead the result of a combination of nonwork-related stresses. Bianchi v. City of San Diego Court of Appeal of California, Fourth Appellate District, Division One August 30, 1989 No. D007565 (HN1)

.... arising out of and in the course of his employmentcounty retirement board to issue a service-connected disability retirement allowance to respondent because respondent had established by a preponderance of the evidence that his hypertension was service-connected within the meaning of Cal. Gov't Code § 31720. McCoy v. Bd. of Ret. Court of Appeal of California, Second Appellate District, Division Seven July 29, 1986 No. B014820. ...hypertension was employment related, the trial court properly admitted as relevant evidence under Gov. Code, § 11513, subd. (c), Gov. Code, § 31720

Instead, the idea has permitted employees to recover for injuries or disabilities caused by work-related aggravations of pre-existing conditions. (See, e.g., Maher v. Workers' Comp. Appeals Bd. (1983) 33 Cal.3d 729 [190 Cal.Rptr. 904, 661 P.2d 1058]; Kuntz v. Kern County Employees' Retirement Assn., supra, 64 Cal.App.3d 414.)

....that while employment-related disability could be a very "small" part of the causal factors, it must nonetheless be "real and [***822] measurable." (87 Cal.App.3d at p. 399.) [*584] The DePuy court also set forth the applicable evidentiary standard: "There must be substantial evidence of some connection between the disability and the job." DePuy v. Board of Retirement (1978) 87 Cal.App.3d 392, 398-399 [150 Cal.Rptr. 791, 12 A.L.R.4th 1150]

....because their employment had contributed substantially to their disability, thus preserving the financial integrity of the system for all those who fairly qualify for disability pension benefits. Bowen v. Bd. of Ret. Supreme Court of California September 25, 1986 L.A. No. 32072; 42 Cal. 3d 572; 724 P.2d 500; 229 Cal. Rptr. 814; 1986 Cal. LEXIS 263; 51 Cal. Comp. Cases 639.

CONCLUSION

All five of my treating doctors indicated I was substantially incapacitated from performing the normal duties as a Senior Legal Analyst, and suggested I do not continue to do this job. Dr. Morris's evaluation indicated I was unable to work at all until I get treatment for my depression. Although, Dr. Glassman indicated in his supplemental report that I "no longer liked working with attorneys" and "anger about her treatment in her workplace setting and her feelings of being mistreated and discriminated against, have led her to feel entitled to receiving permanent medical disability" and I was just looking to get another job, this is the opposite from the truth. I had a good relationship with my supervisors and told them continuously I felt bad because I wasn't able to be there for the team or complete my assignments and they would be better getting someone who could do the work and I think I should get a "fitness for duty" evaluation this was going on since 2008 and started escalating in 2011. I was told "I needed the job and just show up and everything would be alright". There were some attorneys who I felt caused a hostile work environment at certain times in my career, but ultimately it was my own feelings of disappointment in not being able to do the job and getting bad evaluations, leading to increased lower self-esteem and total lack of confidence. Because I was suffering from depression and anxiety attacks these feeling increased due to work conditions making me unable to be at work. My depression was the proximate cause of my excessive absences which resulted in the threat of an adverse action against me due to my absences. This caused additional anxiety of losing my job and I would try harder and harder to show up for work even with the debilitating depressive illness. I tried to get better through two years of counseling and taking depression medications starting in 2011. I filed for disability retirement in January 2013 but by October 2013 even working part-time, again reached a point I was not capable of sustained concentration and was unable to work so I went out on another leave of absence, but this time I was not eligible for further FMLA because I had not worked the minimum number of hours, so I had no better option other than to opt for service retirement pending disability appeal thus ending my career. I am still unable to work at this time in any capacity with feelings of failure and continue to be unemployed. All my treating doctors' indicated I was unable to continue working based on my depression. My excessive absences and leaves of absences were supported by doctors notes and FMLA due to my depression. Lastly, Dr. Glassman was asked to reply to CalPERS within 48 hour of their request for supplemental information and CalPERS did not receive his reply until March 20, 2014, it took CalPERS two years to give me the September 2015 Appeal hearing date denying my right to a speedy hearing. Based on the medical evidence and case law I respectfully request my Disability Retirement be granted.