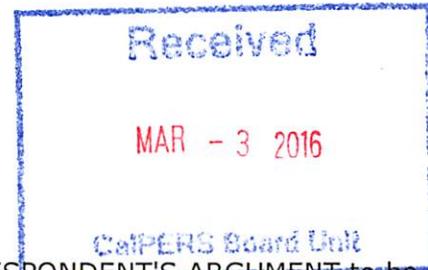


ATTACHMENT C
RESPONDENT'S ARGUMENT

Ortega, Christina

From: Suzy Parker <sassysparker@yahoo.com>
Sent: Thursday, March 03, 2016 3:16 PM
To: Ortega, Christina
Cc: Swedensky, Cheree
Subject: Re: CalPERS RESPONDENT'S ARGUMENT
Attachments: CalPERS RESPONDENT'S ARGUMENT 3.pdf; Dr. Hill PERS ARGUMENT p4of6.jpg; Dr Hill PERS ARGUMENT p5of6.jpg; myCalPERS email p6of6.jpg

Dear Ms. Ortega:



Sent from Yahoo Mail

Attached please find six (6) pages to be included in my CalPERS RESPONDENT'S ARGUMENT to be presented to the Board on the March 12, 2016 meeting. I have attached a total of 6 pages, which is the total number of pages allowed.

Attachments are as follows:
 my written argument: pages 1-3
 Dr Hill report: pages 4,5
 myCalPERS email: page 6

Should any of these attachments not come through, please let me know as soon as you can. This information must be included in the Board Packet for the March 12, 2016 meeting.

Thank you very much for your help.

Darlene S. Parker (Suzy)

Sent from Yahoo Mail

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Thank you very much for your help.

Darlene S. Parker (Suzy)

Darlene S. Parker
4907 Bay View Circle
Stockton, CA 95219
Phone (209) 476-1243

2/28/16

Cheree Swedensky, Assistant to the Board
CalPERS Executive Office
P. O. Box 942701
Sacramento, CA 94229-2701

Re: RESPONDENT'S ARGUMENT
In the Matter of the Application for Disability Retirement of
DARLENE S. PARKER, Respondent and SAN JOAQUIN COUNTY SCHOOLS, Respondent

In argument to the proposed decision by the CalPERS Board in their finding to deny my disability retirement, I would like to, first, apologize for the format that I am using to make my argument as I do not have any legal background, and I have been representing myself throughout this process; and second, ask that you bear with me as I attempt to work through the pertinent Government Codes. I understand that I needed to prove that my disability prevents me from performing the job duties of Account Specialist at the San Joaquin County Office of Education. I would like to take this last opportunity to state my case to the Board with regards to the definition of a CalPERS disability retirement; and also to point out an error by the CalPERS legal office that may have some impact on your decision. To qualify for a disability retirement, I, as the member, must be substantially incapacitated for the performance of my usual duties. (*Mansperger v. Public Employees' Retirement System*, 6 Cal.App.3d 873 [86 Cal.Rptr. 450] [2nd Dist.]) It appears that CalPERS has regarded the physical requirements as "sedentary", and this should not pose any problems for me according to the doctors hired by CalPERS. With my diagnosis of fibromyalgia, cervical disk degeneration, migraines, the physical requirements do pose issues of pain and back/neck spasms. I am only able to sit for 2 hours at a time and have needed to take breaks to walk around the perimeter of the building to stretch and walk to keep from incurring more pain. I have also needed to take numerous trips to the ladies room due to stomach complaints (which I now know are due to IBS, another symptom of fibromyalgia). Pain interrupts concentration. Some medications for fibro interrupt concentration. The SJCOE did ask me if there were things that could be done to my work station to accommodate my issues; they added an ergonomic chair and desk tools to help my posture and hand/arm positions while using my computer. However, the issue of concentration problems was compounded by the location of my work station, which was at the entrance to the office kitchen; coffee, refrigerator, microwave, and this was also a meeting place for employees when they got coffee, lunch, etc. There was often quite a bit of noise, conversations, and general distractions that posed a problem for me, and anyone else in my department that worked at my station. With fibromyalgia, there is what is called "fibro fog", which is difficulty concentrating, remembering, and especially performing "difficult and complex accounting and auditing duties". This issue of my work space location was not addressed whenever I brought it up to the HR Director or my supervisor, even though my supervisor herself said to me that she could not concentrate while at my station. This noise especially posed a problem when I was under tight deadline schedules for many of the reports I worked on.

Since I had begun having the symptoms of fibromyalgia, chronic fatigue, and muscle spasms in 2007, my doctor made this diagnosis based upon my history with her since 2003; and the tender/painful trigger points that I had. On many occasions, I went to her office feeling pain throughout my body, chronic fatigue, and depression that was compounded by the pain and exhaustion. She treated me with medication as well as telling me ways that I could relieve symptoms without so much medication (exercise, yoga, rest, etc). Her advice to me was to read everything I could find about fibromyalgia. I was referred to a pain specialist who also made the diagnosis of fibromyalgia along with carpal tunnel syndrome. She coordinated my pain medications while advising me of other lifestyle changes to help my symptoms. I was also seeing a therapist, Christine Howells, who concurred with the diagnosis of fibromyalgia along with underlying depression, anxiety, and dysthymic disorder. Ms. Howells has since retired, so the documentation already obtained by CalPERS is all that is available from her.

The essential functions of my position included: "assist in the coordination of budget development; complete, prepare and analyze information and data related to income and expenditures; coordinate communication between the business

office and various District/County Office departments and personnel; provide information related to financial accounting procedures, account balances, budgets, records and related matters; perform highly specialized accounting and budgetary functions; conduct internal audits of financial accounts; assist outside auditors in conducting audits of financial records; prepare various financial accounting and budget control documents, reports, prepare invoices for services provided to other agencies; maintain confidentiality; and related duties as assigned". These duties of the Account Specialist were becoming increasingly difficult for me. My annual evaluations reflected the trouble I was having with performing my duties satisfactorily, until I was put on performance probation, and this is the reason that I was advised of termination procedures being brought to me should I not decide to retire. I was told that my options were to either A) take a service retirement; B) apply for service retirement pending disability retirement; C) resign; or D) do nothing and wait for them to begin termination procedures. Since the issues I had been having with my work performance were obviously a result of the physical/mental pain I had been suffering from, along with the "fibro fog", I decided to apply for a disability retirement. For the year before this event, I had been contemplating taking a disability retirement since the physical pain, stress, and fatigue were becoming increasingly unmanageable, and when I was told of their intent to fire me, this decision was made for me. Not once did they offer to find another position there that was less stressful and less complex. I asked about this, and was told that I was welcome to apply for any other jobs that came up there, but I found later that the contract they wrote up when I retired stated that I will never apply for any jobs at the SJCOE. After working at SJCOE for 10 years, it was obvious that my medical issues had caused the deterioration of my work performance. After all, I had been hired into this position, and performed my duties and responsibilities satisfactorily for a number of years. (Gov Code section 31721, 31722).

Of note is the fact that I did not receive any of the IME reports from CalPERS until my appeal hearing, when I was presented with a binder of information; and the week AFTER my appeal, I received a packet in the mail of the documentation that I had requested before the hearing. Please note that I made my request in writing, dated October 10, 2015, and received no response from CalPERS; however, Gov Code Section 11507.5 & Section 11507.6 states (in summary) that I am entitled to (upon written request): a list of witnesses, copies of writings and reports, and/or any other relevant thing which is the basis of the proceeding. Then, on November 12, 2015, I used the myCalPERS website message system to inquire again about my request for copies of info, and when I did not receive a response to that, I phoned the CalPERS legal department on November 19, 2015. At that time, someone named Steve said that the person who could help me had left for the day. The next morning I received a call back at 7:45 am, and the gal I spoke to (Christy?) said she would get the information I had requested – she confirmed who I was and when my appeal hearing was taking place, letting me know that she had at least received some, if not all, of my requests. At the hearing as I looked through my binder, I found that some of the information given by the IMEs was in direct conflict with information that I had received from my doctors regarding fibromyalgia, as well as information that I researched on the internet, yet I did not have the opportunity to prepare for their opinions or findings. Title 8, California Code of Regulations] section 10606 recognizes that not all medical reports may be relied upon by the WCAB. "[N]ot all medical opinion constitutes substantial evidence upon which the board may rest its decision. Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, or inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture, or guess." (Hegglin v. Workman's Comp. App. Bd. (1971) 4 Cal.3d 162, 169 [[93 Cal.Rptr. 15, 480 P.2d 967]]. Prior to my appeal hearing, I did not know that these IMEs presented incorrect information as fact. Not only did they give opinions about my disabilities that did not agree with my own doctors' advice, they also gave opinions about me, personally, that could not have been determined in the short amount of time that each of them spent with me.

Dr Haselwood stated that there were no specific job duties that I was unable to perform, and made some very harsh determinations without having any history with me other than a one hour appointment. In fact, none of the IMEs gave me any accounting or budgeting tests, didn't ask me to analyze any reports, or anything remotely included in my job duties that they are saying I should be able to handle with no problem. My history of employment is also in direct conflict with his opinion that I do not have "the psychologic stamina to deal with full time employment": my problems have only become severe in the last two years of my employment. My work history began when I was 17 years old, I took an eight year break when I had two children, and then I've been working since I was 35.

Dr. Cavanaugh made the same diagnosis as my physician: fibromyalgia, depression, but he also made the determination that there were no specific job duties that I was unable to perform because of a mental condition. My job as an Account Specialist was very stressful in that there is a lot of pressure to complete reports, check reports done by others, and correct reports done by others, all with extremely tight deadline schedules. How could these doctors know that there were no specific job duties I couldn't perform, after a one hour appointment? The IMEs are consistently incorrect in their determinations after having a very short interaction with me in which to make such allegations.

Dr. Auerbach also made mention of the physical limitations and chronic cervical strain as well as “probable cervical degenerative disc disease, and probable carpal tunnel syndrome”. He performed some physical strength tests on my hands, arms, and elbows; he checked my neck and shoulders and said that there was nothing abnormal for someone my age. In his opinion (as stated in his report) I was not substantially incapacitated based upon my orthopedic conditions, but could perform my duties while having pain and intermittent numbness of my fingers.

My own primary care physician, Dr Raissa Hill, has diagnosed me with the aforementioned conditions of fibromyalgia, chronic fatigue, degenerative disk disease, depression, and chronic headaches and/or migraines, from our lengthy doctor/patient relationship; her observations, as well as tests performed over years of being treated by her. About a year before my retirement/dismissal, Dr. Hill, and her associate, physician's assistant Sandra Bonham, had been discussing the idea of me taking time off due to intense work and home stress, and extreme amounts of overtime at SJCOE. My physical and mental disorders have had a cumulative effect on my abilities to sit for longer than 2 hours at a time; to concentrate at the level required in the Account Specialist position, to stay in my work station without making numerous trips to the ladies room because of my stomach problems, and get to work on time due to the length of time it takes me to feel well enough to go in. I am including the Physician's Report on Disability completed by Dr. Hill regarding my diagnosis, but I was unable to afford the cost of bringing her to my appeal, unfortunately.

I did, however, bring as my witnesses my former in-laws, who also employed me from 1977 to 1988. They again employed me for a short time at the end of 2013 to help catch things up in their office, and provide me with a means of income. Their testimony is relevant in that they described how they could see how much my work abilities had deteriorated since I had worked full time for them, running their office. I believe that this testimony, and the reports by Dr. Hill and Christina Howells, is evidence that is reasonable, credible, and of solid value. (In re Teed's Estate (1952) 112 Cal. App. 2D 638, 644). Further, the reports submitted by Dr. Hill and Ms. Howells do, in fact, establish that I am substantially incapacitated to perform my usual duties. See *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876.

I am respectfully asking that the Board consider my arguments here, and decline to adopt the proposed denial of my application for disability retirement. I believe that Dr. Raissa Hill's and Ms Christina Howell's completion of the Physician's Report of Disability shows that I have a permanent disability and can no longer perform the duties of Account Specialist; that this form should not be in CalPERS' disability packet if it is not going to be a determining factor in the finding of CalPERS' Board. (Government Code section 31720.3 (Stats 2008 ch. 370, § 4 (AB 2023), effective January 1, 2009) In addition, I could not know that CalPERS did not receive enough evidence to make a favorable determination for a disability retirement because my letter of October 11, 2015 requesting copies of all documents received by CalPERS was ignored until AFTER the hearing, my followup message placed on myCalPERS website was ignored, and I finally received a call back on November 19 when my hearing was on December 7. Also, I did not receive the copies of reports done by the doctors hired by CalPERS, and therefore could not prepare for their allegations or conclusions. By trying to work this out in good faith, and with NO legal background, I am only now finding out that CalPERS did not comply with the requests for Discovery, Procedures, Scope, and Methods. Further, Gov Code Section 21150 provides “any member incapacitated for the performance of duty shall be retired for disability....”; the SJCOE told me that they were going to pursue employment termination for failure to perform satisfactorily; when this is a direct result of my disease of fibromyalgia and chronic fatigue as stated by my physician; due to the fact that I had taken a medical leave one year previous for the same issues, and due to the fact that I had been performing satisfactorily in this position for several years until I became too sick to continue doing this job (Government Code section 31721, 31722).

I appreciate the opportunity to bring my argument to you one final time, and I hope that I have been able to articulate how I could no longer perform the essential duties of my job, with supporting information and diagnoses by my primary care physician and therapist; and explain that I did not have enough information prior to my appeal hearing to successfully prepare.

Respectfully,

Darlene S. Parker

Put your name and Social Security number or CalPERS ID at the top of every page

Darlene S. Parker
Your Name

[Redacted]
Social Security Number or CalPERS ID

2013/08/09 12:01:12 S7 4171

Section 5

Member Incapacity

Review the attached duty statement and physical requirements of the member's position prior to answering these questions

To qualify for a disability retirement the CalPERS member must be substantially incapacitated from the performance of the usual duties of his/her position with the current employer. This substantial incapacity must be due to a medical condition of permanent or extended and uncertain duration. Disability is not necessarily an inability to perform fully every function of a given position. Rather, the courts have concluded that the test is whether the member has a substantial inability to perform the usual and customary duties of the position. Prophylactic restrictions are not a basis for a disability retirement.

1 Is the member currently, substantially incapacitated from performance of the usual duties of the position for their current employer? Yes No

If yes you must describe specific job duties/work activities that the member is unable to perform due to incapacity. Refer to member's job duty statement and *Physical Requirements of Position/Occupational Title* form

2 Will the Incapacity be permanent? Yes No

If not probable duration < 6 months 6 months - 1 year 1 - 2 years Other

If other please describe _____

3 Was the job duty statement/job description reviewed to make your medical opinion? Yes No

4 Was the *Physical Requirements of Position/Occupational Title* form reviewed to make your medical opinion? Yes No

5 Was information reviewed that the member provided? Yes No

If so, please attach the information provided by the member

Section 6

Member Mental Status

Is the member mentally able to handle financial affairs and enter into legally binding contracts?

Yes No

Date of Onset (mm/dd/yyyy) _____

Is the member competent to endorse checks with the realization of nature and consequence of the act?

Yes No

Date of Onset (mm/dd/yyyy) _____

Section 7

Physician's Signature

Mail completed report directly to CalPERS. Do not give to member.

CalPERS has my permission to release a photocopy of report to member upon written request Yes No

Raissa M Hill
Print Physician Name

(209) 477 5552 (209) 477 5553
Phone Number Fax Number

77 W. March Ln
Address

Stockton
City

CA 95207
State ZIP

[Signature] DO
Signature of Physician/Title

Familin practice 08/07/13
Medical Specialty Date (mm/dd/yyyy)

All questions on this form must be answered or application will be incomplete which will delay processing

Mail to:

CalPERS Benefit Services Division - P.O. Box 2796 - Sacramento - California 95812, 2796

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Subject: Disability Retirement Denial Appeal Hearing
Category: Disability Id: 0007554960

Sent 11/12/2015

I have a scheduled appeal hearing for December 7, 2015, and had sent a letter to the legal department on October 11, 2015 in response to your letter to me regarding the Statement of Issues. I have not received a response to my letter, nor any further instruction regarding my hearing. Since the December 7 date is fast approaching, I am checking in using email in hopes of getting some information on this upcoming hearing. I will also phone your office, however, it is too late today, and I haven't had it come to mind during business hours.

Any information on my appeal will be greatly appreciated. Since I will be representing myself, I am trying to be as prepared as I possibly can.

Thank you very much,
Darlene S. Parker

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