

**ATTACHMENT C**  
**RESPONDENT(S) ARGUMENT(S)**



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8 **BOARD OF ADMINISTRATION**  
9 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

10  
11 In the Matter of the Application for  
12 Disability Retirement of:

13 EDITH Z. DAVENPORT,

14 Respondent.

15 and

16 WEST CITIES POLICE  
17 COMMUNICATIONS,

18 Respondent.

**RESPONDENT, EDITH  
DAVENPORT'S ARGUMENT IN  
OPPOSITION TO PROPOSED  
DECISION**

Agency Case No. 2015-0037  
OAH Case No. 2015031184

Hearing Date: December 9, 2015

Hearing Location: Glendale, California

Time: 9:00 a.m.

19 **I. INTRODUCTION**

20 Respondent, Edith Davenport, hereby submits her Argument In Opposition to the  
21 Administrative Law Judge's Recommended Decision dated February 1, 2016.

22 Edith Z. Davenport, the Respondent, worked as a Police Dispatcher for West Cities  
23 Police Communications. In that capacity, she was the Dispatcher that received a phone  
24 call on October 12, 2011 involving a gunman who shot and killed eight people in Seal  
25 Beach at a retail establishment.

26 After missing approximately one week of work as a result of the psychological  
27 trauma from that incident, Ms. Davenport continued to work until December 2012 while  
28 under the care of various therapists and permanently stopped working as a result of a

1 training video triggering her post-traumatic stress disorder symptoms. The Administrative  
2 Law Judge ("ALJ") narrowly construes the evidence without consideration to the totality  
3 of her disabilities. Dr. Gudapati, Dr. Gallivan, Dr. Faguet (Agreed Medical Examiner) and  
4 the MCM I interpretative report all support a finding of permanent incapacity.

5 Moreover, the ALJ's reasoning was inconsistent with the applicable legal standard  
6 for finding Ms. Davenport permanently disabled. The ALJ proposed decision was based  
7 on his view that "[t]he evidence does not demonstrate that respondent was ever completely  
8 unable to fulfill her duties." (Proposed Decision, p. 12). Respondent, however, is only  
9 required to show "a substantial inability" to perform her "usual duties."

10 Only Dr. Lawrence Warick found Ms. Davenport capable of performing her duties  
11 as a Dispatcher despite the fact that objective testing he personally administered at the time  
12 of his examination substantiated a continuing "severe mental disorder". As a CalPERS  
13 miscellaneous member, the issue of permanent incapacity also required consideration of all  
14 factors, whether industrial or non-industrial. Dr. Warick's testimony, however, indicated  
15 he considered only industrial injuries when reaching his conclusion. In addition, Dr.  
16 Warick was unable to offer any response or opinion to critical medical issues raised during  
17 his examination at the administrative hearing. The ALJ unreasonably attributed substantial  
18 and predominant weight to Dr. Warick's opinions, which were seriously lacking in  
19 foundation and credibility.

20 **II. FACTS OF SHOOTING AND PERSONAL FACTORS**  
21 **CONTRIBUTING TO PERMANENT DISABILITY**

22 Prior to the massive killings on October 12, 2011, Ms. Davenport suffered other  
23 emotional traumas. As indicated by the Administrative Law Judge at page four, Finding of  
24 Fact #15, a list of non-industrial components are identified which include:

- 25 1. Ms. Davenport's loss, at age 5, her nineteen year old brother, shot by a stranger.
- 26 2. An abortion in 1998.
- 27 3. A single mother in 1999 after being abandoned by her child's father and raising  
28 her child alone.

1 4. An unhappy marriage between 2003 and 2008 as a result of her husband being  
2 unfaithful.

3 5. Endometriosis and ectopic pregnancy in 2003 causing internal bleeding and  
4 emergency surgery in which her life was at stake.

5 6. Remarried in 2010 and in April 2011 experienced a second ectopic pregnancy in  
6 which she underwent a surgical procedure to remove her ovaries and fallopian tube.

7 7. In the course of her treatment for her second ectopic pregnancy, she developed  
8 hyperthyroidism requiring surgical removal of her thyroid in 2011 which was cancerous.

9 **All of these events occurred prior to the multiple shooting tragedy of October**  
10 **12, 2011.**

11 Subsequent to the mass shooting, Ms. Davenport received continuing therapy  
12 through the care of Dr. Gudapati who prescribed medication for her psychiatric symptoms.  
13 Ms. Davenport also obtained the care of a therapist, Tom Richards, a psychologist. Dr.  
14 Richards treated Ms. Davenport for many months after she stopped working in December  
15 2012 and also after she returned to work as a dispatcher. **However, two months later, in**  
16 **February 2013, Ms. Davenport's therapist, Tom Richards, committed suicide.**

17 The above events occurred in addition to her receiving the October 2011 call in  
18 which a massive shooting was in progress. Ms. Davenport heard the chaos, the screams  
19 and the gunfire in the background. As she took the call, she cried as she obtained the  
20 description and details of the shooting. Her fifteen to twenty minute phone call and  
21 subsequent phone calls involving the massive shooting caused significant mental disorders.

22 After returning to work a week after the shooting, she continued to work with great  
23 difficulty until December 5, 2012. The Transcript of Testimony in this matter illustrates  
24 her continuing difficulty in performing her job duties, including her need to be relieved on  
25 certain calls, missing time from work, and taking medication at work. On her last day of  
26 work, Ms. Davenport attended mandatory training for emergency calls, but left early  
27 because she could not handle being exposed to actual visual and audio footage of traumatic  
28 events, including shootings and death. Ms. Davenport has not returned to work since.

1           The Administrative Law Judge's Findings of Fact #16 illustrates Ms. Davenport's  
2 continuing struggle with depression and anxiety. Specifically, the Administrative Law  
3 Judge states:

4                   "16. Respondent testified slowly, at times tearfully, that, since  
5 the incident, she suffers from depression and anxiety and  
6 feelings of guilt that she is not stronger mentally and  
7 emotionally. Her testimony was consistent with that of a  
8 person struggling with depression. She no longer participates  
9 in many activities of daily life, such as preparing meals, daily  
10 care of her children, paying household bills, and doing other  
11 household chores. All such activities she leaves to her 16-year-  
12 old daughter and husband. Respondent's mother, who lives  
13 near her, also helps out occasionally."

14                   **III. THE MEDICAL EVIDENCE SUPPORTS A FINDING**  
15                   **OF PERMANENT INCAPACITY**

16           Subsequent to the death of her treating psychologist, Ms. Davenport continued to  
17 receive care at the same mental health facility from **Dr. Gina Gallivan**. Dr. Gallivan  
18 diagnosed Ms. Davenport's condition as post-traumatic stress disorder and major  
19 depressive disorder. **Dr. Gallivan found Ms. Davenport permanently incapacitated**  
20 **from the performance of her job duties.**

21           In a workers' compensation case, Ms. Davenport was evaluated by an Agreed  
22 Medical Examiner, **Dr. Robert Faguet**, a Board Certified Psychiatrist. Dr. Faguet also  
23 reached the same diagnosis of post-traumatic stress disorder and major depressive disorder.  
24 **Like Dr. Gallivan, he also as a psychiatrist, found Ms. Davenport unable to perform**  
25 **her job duties.**

26           The only other reporting physician who addressed permanent incapacity was  
27 solicited by CalPERS, Dr. Lawrence Warick. While Dr. Warick found Ms. Davenport  
28 capable of performing her job duties, he failed to properly evaluate the objective testing  
performed at his request. The results of the testing indicate that Ms. Davenport was  
"experiencing a severe mental disorder". (Exhibit 7, p. 2).

1 In addition, Dr. Warick misunderstood his role in this matter. In reviewing the  
2 Transcript of his Testimony, it was revealed that he understood a finding of permanent  
3 incapacity would be made **only** if the disabling condition was industrial.

4 Dr. Warick's testimony reveals he was also unable to provide answers to critical  
5 medical questions. Most notably, Dr. Warick *agreed with the interpretive test results* from  
6 the MCMII-III, and which indicated features of severe psychiatric impairment. When  
7 asked whether these features were conducive to police dispatching work, **Dr. Warick**  
8 **could not provide an answer.**

9 Dr. Warick was also *not* aware of symptoms she experienced upon returning to  
10 work after the October, 2011 shooting – that she was routinely tearful, unable to process  
11 information, and required assistance performing work. When asked if such symptoms  
12 suggested an inability to perform dispatch work, **Dr. Warick could not provide an**  
13 **answer.** When asked whether Ms. Davenport's behavior warranted any work restrictions,  
14 **Dr. Warick could not provide an answer.**

15 The Administrative Law Judge relied upon Dr. Warick's conclusions and speculates  
16 upon Ms. Davenport's future when he states in his LEGAL CONCLUSIONS at page 12:

17 "9. Respondent is proceeding with work plans. She seeks to  
18 be educated and trained as a nurse. That job has similarities to  
19 that of a police dispatcher. Calm and critical thinking are  
20 required of a nurse facing the medical and physical dangers  
threatening others. Such dangers may be faced by even those  
nurses who had never worked in a hospital or directly with  
patients, and simply manage health from an office."

21 This legal conclusion is not based upon factual foundation. There is no evidence  
22 in the record that Ms. Davenport completed her nursing training. When asked in cross  
23 examination as to the similarities between nursing and police dispatching, Dr. Warick said  
24 there were many. However, Ms. Davenport is not working as a nurse nor do nurses only  
25 work in emergency room situations. Nurses also work in an administrative capacity and/or  
26 in office settings where life threatening events are not present. The evidence is speculative  
27 and fails to support the above legal conclusion.

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1 Further, the Administrative Law Judge is not completely convinced of his position  
2 when he cites LEGAL CONCLUSION #13 at page 13 where he states:

3 "The weight of the medical evidences tends to show that  
4 Respondent is not incapacitated by reason of her psychological  
5 condition and its associated physical condition and is not  
6 eligible to retire for disability." (Emphasis added)

7 The word "tends" is not a statement of persuasion, but substantially less. In other  
8 words, the Administrative Law Judge is not convinced in his own opinion.

9 By the Board ordering the Transcript and Exhibits in this matter and making its own  
10 independent decision, the evidence exceedingly demonstrates Ms. Davenport is  
11 psychologically incapable of performing the duties of a police dispatcher which, requires  
12 intense concentration, prioritizing and relaying calls of emergency, making quick  
13 decisions, listen actively and effectively question the caller, and the ability to express one's  
14 self as a dispatcher in a clear and accurate manner. Even the Administrative Law Judge's  
15 own observations of Ms. Davenport's testimony reveals a person who is depressed.

16 **IV. CONCLUSION**

17 Respondent, Ms. Davenport, requests that the CalPERS Board review this  
18 Argument in Opposition to the Administrative Law Judge's Decision and order the  
19 Transcript of Testimony and documentary evidence, and review the matter independently.  
20 Upon independent review, the evidence strongly supports a finding of permanent  
21 incapacity.

22 DATED: March 3, 2016

Respectfully submitted,

23 LEWIS, MARENSTEIN, WICKE,  
24 SHERWIN & LEE, LLP

25 By:   
26 THOMAS J. WICKE  
27 Attorneys for Respondent  
28 EDITH Z. DAVENPORT

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 20750 Ventura Boulevard, Suite 400, Woodland Hills, CA 91364-2338.

On March 4, 2016, I served true copies of the following document(s) described as **RESPONDENT, EDITH DAVENPORT'S ARGUMENT IN OPPOSITION TO PROPOSED DECISION** on the interested parties in this action as follows:

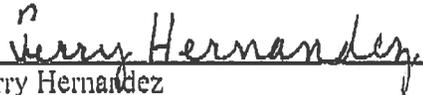
Cheree Swedensky, Assistant to the Board  
CalPERS Executive Office  
P.O. Box 942701  
Sacramento, CA 94229-2701  
Transmitted via Facsimile Only to:  
(916) 795-3972

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Lewis, Marenstein, Wicke, Sherwin & Lee, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Woodland Hills, California.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 4, 2016, at Woodland Hills, California.

  
Terry Hernandez