

ATTACHMENT C
RESPONDENT(S) ARGUMENT(S)

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 7 CYNTHIA S. SIMMONS-COTLEDGE

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

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

12 CYNTHIA S. SIMMONS-COTLEDGE,
 13 Respondent,
 14 and
 15 EMPLOYMENT DEVELOPMENT
 16 DEPARTMENT,
 17 Respondent,

CASE NO: 2015-0125

OAH NO: 201509032

RESPONDENT'S ARGUMENT

18 COMES NOW Respondent Cynthia Simmons-Cotledge by and through counsel David T.
 19 Holzman and respectfully requests the Board of Administration (Board) of the California Public
 20 Employees' Retirement System (CalPERS) adopt and approve the decision of ALJ Samuel D.
 21 Reyes dated 5/27/16 which granted Respondents Application for Disability Retirement.
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 25 **SUMMARY OF THE CASE**

26
 27 Respondent Cynthia Simmons-Cotledge sustained a work injury 8/24/11 resulting in a
 28 condition known as vestibular neuritis. This condition causes Respondent to have severe dizzy

1 spells, nausea, fainting spells which have rendered Respondent physically incapacitated from the
2 substantial performance of her usual and customary duties.

3
4 Respondents condition was diagnosed based on objective testing performed by Michael
5 Merrin, M.D. an otolaryngologist, Carl Garbus, M.D. a neuro ophthalmologist and Ezekiel Fink,
6 M.D. a neurologist.

7
8 On 4/27/16 this matter came on for a hearing before Administrative Law Judge Samuel D.
9 Reyes. After reviewing all of the medical records including treating doctor medical records,
10 diagnostic testing and after listening to Respondents testimony ALJ Reyes issued a decision in
11 which he recommended granting Respondents Application for Disability Retirement.

12
13 As is discussed more fully below the decision of ALJ Reyes was correct. Respondent is
14 incapacitated from the usual duties of her job and in fact Respondent is disabled and incapacitated
15 from all substantial gainful employment at this time based on her current condition which resulted
16 from her industrial injury. Based on this Respondent respectfully requests the Board grant her
17 Disability Retirement.

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21 **STATEMENT OF THE FACTS**

22 The following is a summary of the medical evidence submitted at the time of the hearing:

- 23
24 • 9/12/11 – Report – David Wyatt, M.D. – Notes 8/24/11 industrial injury. Documents
25 ongoing symptoms and states:

26
27 “She is ... doing very poorly. Severe dizzy spells when she turns
28 her head.”

- 1 • 12/19/11 – Report – David Wyatt, M.D. – States:

2
3 “Dizziness, near fainting spells. She is not much better.”

- 4 • 6/6/12 – Report – David Wyatt, M.D. – States:

5
6 “10 months ago fell ... off work completely since that time ... gets
7 extremely dizzy.”

- 8 • 1/7/13 – Report – David Wyatt, M.D. – States:

9
10 “Continuing to be severely disabled by her chronic recurrent
11 episodes of dizziness, loss of equilibrium... Pain with movement
12 of her neck and almost any direction, and when she does move the
13 neck in addition to the pain she gets the severe dizziness... She is
14 extraordinarily frustrated. She is extremely anxious to back to
15 work, but unable to do so due to her ongoing symptoms.”

16
17 “Her specific limitations are she needs to by lying down most of
18 the time. If she stands and walks very slowly and very carefully,
19 she is able to cover some distance, but if she tries to move her head
20 to the left or to the right, she gets very dizzy and sometimes falls
21 down. She has difficulty with any kind of the daily activities. She
22 is unable to cook. She is unable to travel in a car where her
23 husband drives and she pretty well keeps her eyes closed and her
24 head very still. So, she does not experience dizziness. These
25 conditions are what keeps her from being able to get back to work.
26 I do not feel at this point she has any work modifications that
27 would be able to allow her to get back to work.”

- 21 • 5/9/13 – Report – David Wyatt, M.D. – States:

22 “Continues to lose balance and almost consciousness ... this has
23 been going on since the injury. Remain off work.”

- 24 • 10/2/13 – Report – David Wyatt, M.D. – States:

25
26 “Chronic dizziness. She has had these symptoms now for 2 years
27 ... she has severe fainting episodes and has been taken to the
28 hospital. Remain off work.”

- 1 • 4/2/14 – Report – David Wyatt, M.D. – States:

2
3 “Continues to have very little improvement ... tremendous amount
4 of dizziness. Even the slightest movement of her head in the wrong
direction can cause her to fall.”

- 5 • 6/1/15 – Report – Sansum Clinic (Dr. Wyatt and Dr. Musicant) – Recommends neuro
6 otology evaluation and other testing.

- 7
8 • 1/27/16 – Report – Carl Garbus, M.D. (neuro ophthalmologist) – States:

9
10 “Sensory motor testing interpretation: Vertical phoria in 6 of 9
11 positions of gaze. Note the increased vertical phoria in downgaze
positions, which can effect walking and reading.”

- 12 • 2/13/16 – Report – Carl Garbus, M.D. – States:

13
14 “The results of the testing showed that she [Respondent] has
15 binocular vision deficits and visual vestibular deficits. ... binocular
16 deficits [cause] poor coordination of the eyes, which reduces the
17 ability to judge distance and depth accurately. Vestibular deficits
18 relate to problems when moving the head and can cause the world
19 to become disorienting. Often dizziness and nausea are present ...
as a result Cynthia should not be driving. She would not be safe as
20 a driver and symptoms of dizziness would easily be triggered with
head turns during driving. Just the vibration of the car could
activate adverse reactions.”

- 21 • 2/22/16 – Report – Michael Merrin, M.D. (Otolaryngologist) – Electronstagnogram (ENG)
22 and videonystagmograph (VNG) testing which produced the following diagnosis:

23
24 “Vestibular neuritis”

- 25 • 3/14/16 – Report – Ezekiel Fink, M.D. (State appointed Qualified Medical Evaluator in
26 neurology) – States:

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28 “There is objective evidence of inner ear pathology with post
traumatic mechanism ... there is objective evidence of vestibular

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pathology the ENG/VNG supporting my prior views (of the vestibular neuritis diagnosis).”

Respondent Cynthia Simmons-Cotledge continues to have the severe symptoms outlined above. Efforts are being made to provide treatment which, at this point, has not been successful. Ms. Cotledge remains off work and unable to work. As discussed more fully below Ms. Cotledge loved her job and throughout the period of her incapacity has hoped her condition would get better and has done everything possible to address the issues created by her condition but has of yet nothing has been successful and she remains incapacitated and off work.

Based on the above and based on the entire medical record and the testimony of Respondent at the hearing it is respectfully requested that the decision of ALJ Reyes be adopted by the Board and Respondent granted her disability retirement.

ARGUMENTS

The decision of ALJ Reyes to grant Respondents disability retirement was correct and should be adopted by the Board.

Respondent would ask the Board to consider the following in deciding to adopt the recommendation of ALJ Reyes to grant Respondents disability retirement:

- Respondent Cynthia Simmons-Cotledge has an excellent work record, had been employed by EDD for many years and loved her job. At the time of Respondents industrial injury she had plans for new programs she wanted to try and implement and was very much looking forward to her future as a long term employer at EDD.
- Respondents testimony at the time of hearing was fully consistent with the medical record.

Per the reporting of Respondents treating doctors, at all times since her industrial injury,

1 Respondent has been incapacitated by the condition that has been diagnosed as vestibular
 2 neuritis. This condition causes Respondent to suffer severe and ongoing dizzy spells which
 3 make it such that to even leave her house Respondent has to have someone go with her
 4 because when she suffers a fainting spell while out of the house she needs someone to be
 5 there to assist her.
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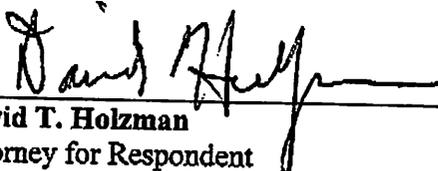
- 7 • Respondents condition was fully validated by the objective testing done by
 8 otolaryngologist Michael Merrin, M.D., neuro ophthalmologist Carl Garbus, M.D. and
 9 neurologist Ezekiel Fink, M.D. as well as the ongoing reporting of Respondents treating
 10 doctors, Dr. Wyatt and Dr. Wexler. The ENG, the VNG, as well as the neuro-optometric
 11 evaluations done by Dr. Garbus established that Respondent does have binocular vision
 12 deficits and visual vestibular deficits which are validated by the objective testing done by
 13 the various doctors. The VNG was positive for "right peripheral vestibular weakness".
 14
- 15 • As noted by ALJ Reyes neuro surgeon, Dr. Krell, hired by CalPERS to report on this case,
 16 did not review any of the objective diagnostic testing and as such his opinions were not
 17 substantial evidence and could not be relied upon by the ALJ. Dr. Krell did not review the
 18 ENG nor the VNG results. He did not review the neuro optometric testing done by Dr.
 19 Garbus nor all of the reporting of Dr. Fink. As such Dr. Krell's opinion were properly
 20 rejected by the ALJ.
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22
 23 Based on the above it is again respectfully requested that the Board adopt the decision of

24 ALJ Samuel D. Reyes and grant Respondent her disability retirement.

25 Dated: 8/2/16

26 Respectfully submitted,

27 By: 
 28 David T. Holzman
 Attorney for Respondent

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STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is 5951 Encina Rd., Suite 105, Santa Barbara, California 93101.

On August 2, 2016, I served the parties in this action the foregoing documents:

Respondent's Argument

Case No: 2015-0125

OAH No: 201509032

x by placing the originals thereof enclosed in a sealed envelope addressed as follows:

Cheree Swedensky, Assistant to the Board
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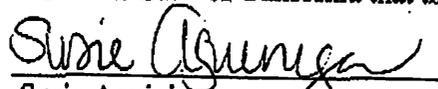
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Executed on August 2, 2016, at Santa Barbara, California.

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


Susie Aguiniga

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To: Cheree Swedensky
Assistant to the Board

From: David T. Holzman

Fax: (916) 795-3972

Pages: 7

Phone:

Date: August 2, 2016

Re: Cynthia S. Simmons-Cotledge

Case No: 2015-0125

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• **Comments:**

Attached please find Respondent's Argument.

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