

**ATTACHMENT A**  
**THE PROPOSED DECISION**

BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA

In the Matter of Application for Disability  
Retirement of:

LINDA C. DISNEY,

and

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION,

Respondents.

Case No. 2016-0506

OAH No. 2016060964

**PROPOSED DECISION**

On December 6, 2016, a hearing in this matter convened before Marilyn A. Woollard, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, in Sacramento, California.

Terri L. Popkes, Senior Staff Counsel, represented the California Public Employees' Retirement System (CalPERS).

Linda C. Disney (respondent) appeared and represented herself.

There was no appearance by or on behalf of the California Department of Corrections and Rehabilitation (CDCR), which was timely served with the Statement of Issues and the Notice of Hearing. The matter proceeded as a default against respondent CDCR, pursuant to Government Code section 11520.

Oral and documentary evidence was received and the parties offered oral closing arguments. The record was then closed and the matter was submitted for decision on December 6, 2016.

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
FILED *[Signature]* 2017  
*Kady [Signature]*

## FACTUAL FINDINGS

1. Respondent was employed by CDCR as a Staff Services Analyst (SSA) in its Office of Legal Affairs (OLA). She is a state industrial member of CalPERS, subject to Government Code section 21150.<sup>1</sup>

2. Application: On October 5, 2015, respondent filed her Disability Retirement Election Application (Application) and indicated her specific disability was: "low vision. See Attachment A (macular retinoschisis)." Respondent reported that the disability occurred on "10/08/2014 [ER]," and was "from birth defects."

Respondent described the limitations/preclusions that resulted from her disability as: "Limited reading with magnification aids to no more than 10 min. per hour." In her attached explanation of how this condition affected her ability to perform her job, respondent stated that the: "10 minute an hour reading restrictions with magnification aids doesn't allow me to perform the required duties of a SSA. In an effort to ease these symptoms, the doctor has implemented a 10 minute an hour reading restriction. To help understand my sensitivity to brightness/glare for example, have you had your eyes dilated? That's what it is like for me all the time . . ." Respondent explained that "trying to read print, smaller print, rows of numbers, hard to decipher handwriting, everything on stark white paper, print on a monitor and the magnifying machine" caused her "eye fatigue/strain, blurriness, the words move, jump around, and it makes [her] head just throb intensely." This caused the paper to look "like someone has dropped hole punch dots on the page" and contributed to errors in her work.

3. Dr. McClanahan: Ophthalmologist William C. McClanahan, M.D., was listed as respondent's treating physician. Dr. McClanahan completed and signed a CalPERS Physician's Report on Disability (Physician's Report), in support of respondent's Application, which was received October 7, 2015. After reviewing OLA's Duty Statement and Physical Requirements, Dr. McClanahan wrote that respondent was substantially incapacitated from the performance of her usual job duties and that respondent's incapacity was permanent.

4. On October 7, 2015, respondent signed an application for service retirement. Her last day of work was December 31, 2015, when she retired for service. She has received her retirement allowance since that time.

---

<sup>1</sup> Government Code section 21150, subdivision (a), provides: "A member incapacitated for the performance of duty shall be retired for disability pursuant to this chapter if he or she is credited with five years of state service, regardless of age, unless the person has elected to become subject to Section 21076, 21076.5, or 21077."

5. On January 22, 2016, Anthony Suine, Chief of CalPERS' Benefit Services Division, notified respondent that CalPERS had reviewed all medical evidence submitted pertaining to her Application, including reports prepared by Dr. McClanahan and Christian Serdahl, M.D. Based on this review, CalPERS had determined respondent was not substantially incapacitated from the performance of her usual and customary duties as a Staff Services Analyst for CDCR, on the basis of an ophthalmological condition. Consequently, her Application was denied.

6. Respondent appealed the denial. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California pursuant to Government Code section 11500 et seq.

At the hearing, CalPERS called Dr. Serdahl as a witness. Respondent testified on her own behalf and called Bonnie Hinrichsen as a witness. The testimony of these witnesses is paraphrased as relevant below.

*Job Duties and Physical Requirements of a Staff Services Analyst*

7. Job Duties: OLA's SSA Duty Statement, revised January 1, 2014, describes the essential functions and duties of a SSA, who performs a "broad range of less complex analytical support services" for OLA staff and is "responsible for initiating and maintaining OLA's many contracts." The Duty Statement breaks the specific job tasks down by time percentages:

- 50 percent: reviewing and approving invoices for payment, maintaining data in OLA's databases and providing reports related to contracts to CDCR management and staff;
- 30 percent: includes monitoring contracts and conferring with OLA staff regarding need to amend legal services agreements, consulting with staff counsel to obtain law firms, preparing and submitting contract and amendment request packages;
- 10 percent: includes acting as liaison between DGS, OLA and CDCR staff;
- 5 percent: includes gathering data, preparing requested report, and attending meetings as requested, and
- 5 percent: includes other analytical duties as assigned.

The Duty Statement further provides that the SSA must “be able to demonstrate a high degree of initiative, professionalism, tact and confidentiality.” In addition to knowledge-based, reasoning and analytical requirements, the SSA is required to clearly present technical and legal information and present it to laymen; to work independently; to learn rapidly, follow directions and communicate effectively. In addition,

All of the essential functions of the Staff Services Analyst require reaching, grasping, the repetitive motion of keyboarding, sitting/standing for lengthy periods of time and near acuity viewing ability.

8. As revised effective August 1, 2014, the Duty Statement indicates that the essential duties of the SSA are:

- 35 percent: serves as Records Retention Analyst Primary contact for OLA records management, retention and inventory.
- 30 percent: assists with Public Records Act (PRA) Requests (includes the entry of PRA request information into ProLaw and appropriate databases).
- 25 percent: Legal Support Analyst (includes preparation of less complex CDCR analysis, correspondence, and research on various issues).
- 5 percent: serves as the OLA Librarian (includes ordering materials; ensuring adequate and current resource materials).
- 5 percent: support to Legal Administrative Support Team (includes scanning, filing, copying, inventory and reception desk coverage).

9. Physical Requirements: CalPERS received a completed form entitled “Physical Requirements of Position/Occupation Title” (Physical Requirements) for OLA’s SSA, which was signed by respondent and her supervisor, respectively, on October 7, 2015, and September 30, 2015.

Respondent was “never” required to: run; crawl; lift over 25 pounds; work with heavy equipment, bio-hazards or at heights; be exposed to extreme temperatures or to dust, gas, fumes or chemicals; or operate foot controls or repetitive movement.

Respondent was “occasionally – up to three hours” required to: stand, walk, kneel, climb, squat, bend at the neck and waist; twist neck and waist; reach above and below

shoulder; push and pull; perform fine manipulation, use power grasping; lift/carry up to 25 pounds; and walk on uneven ground, drive, and be exposed to excessive noise.

Respondent was “frequently – three to six hours” required to: sit; use simple grasping; repetitively use hands; use keyboard and mouse; and use special visual or auditory protective equipment.

#### *Independent Medical Evaluation*

10. Christian L. Serdahl, M.D. is an ophthalmologist who is certified by the American Board of Ophthalmology. Dr. Serdahl has been in private practice since 1991. He has served as Chief of Ophthalmology at Mercy General and Sutter General Hospitals. Dr. Serdahl’s professional activities have included work as a consultant for the Medical Board of California and as an assistant clinical professor at the U.C. Davis Medical School.

11. At CalPERS’ request, Dr. Serdahl conducted an Independent Medical Examination (IME) of respondent for a visual disability on November 2, 2015, and authored an IME Report that same date. As part of his IME, Dr. Serdahl reviewed respondent’s job description, her Application, the Physical Requirements of the position, and respondent’s medical records from Kaiser from September 23, 2014, through August 10, 2015.

The IME Report reflects that respondent drove herself to the examination in Rancho Cordova. Respondent was cooperative but complained of severe photophobia (light sensitivity). Her current complaint was “difficulty with glare while working on the computer.” Under History, Dr. Serdahl noted that respondent’s medical history “is significant for retinopathy of prematurity in both eyes. She lost vision in her right eye as a teenager and had the eye removed and now uses a prosthesis. Her left eye has had cataract surgery at Kaiser in 2010. Ms. Disney states that her visual acuity was not improved with the surgery but that ‘things seemed brighter after surgery.’”

12. On focused physical examination, Dr. Serdahl found that respondent’s vision in her left eye was 20/60, with Refraction: -1.75+.50 x 80 OS. He described the eye examination of respondent as “difficult” due to “extreme photophobia but disc and macula appear normal. Retinal vessels show temporal traction consistent with old ROP.”

Dr. Serdahl impression/diagnosis was as follows:

Ms. Disney has the diagnosis of retinopathy of prematurity (ROP) in her left eye. As an infant, she was exposed to increased levels of oxygen that caused scarring in her retina. Most likely she developed a retinal detachment in her right eye that resulted in phthisis and subsequent removal of the eye. The left eye also shows evidence of ROP, but to a lesser degree. Her vision is approximately 20/60 in her left eye and she has significant photophobia making her exam difficult.

She states she has no problems with driving and has a valid California driver's license that stipulates no night time driving. It is my opinion that with appropriate lighting and magnification, Ms. Disney is capable of performing her duties as a Staff Services Analysis which are largely clerical and require computer use.

13. In response to CalPERS' questions regarding specific job duties respondent is unable to perform because of a physical or mental condition, Dr. Serdahl wrote: "Based on my objective findings, there are no aspects of her job duties she is unable to perform as a Staff Services Analyst. I have reviewed the member's duty statement/job description and physical requirements of her position."

In response to CalPERS' questions regarding whether respondent is presently substantially incapacitated for the performance of her duties, Dr. Serdahl wrote:

No. In my professional opinion, the member has 20/60 vision in her left eye and with proper lighting and magnification; he [sic] is able to perform her duties. I do recommend a modified work schedule such that she is allowed to take a short break every hour to rest her eyes and avoid eye strain.

14. On January 6, 2016, Dr. Serdahl prepared a Supplemental Report, in response to CalPERS' letter requesting his "final recommendation if the member does not have reasonable accommodations to perform her job duties." Dr. Serdahl wrote:

Ms. Disney has vision somewhere in the range of 20/60 in her only eye. She has a history of retinopathy of prematurity and severe photophobia. During my IME Report dated 11/2/2015, it was my understanding that Mrs. Disney was already using screen magnification with variable lighting to do her clerical job as a Staff Services Analyst. It was my opinion that she should be able to perform all aspects of her job using these accommodations.

If these accommodations were unavailable, my opinion is that the member would be unable to perform her duties for her job and would need to file for disability. Hopefully this clarifies my report . . . .

#### *Respondent's Evidence*

15. Respondent did not call a medical expert to testify on her behalf. Instead, she submitted medical reports from various physicians and also offered correspondence with the Return to Work (RTW) Coordinator at CDCR's Office of Employee Wellness. These

documents were admitted as administrative hearsay and have been considered to the extent permitted under Government Code section 11513, subdivision (d).<sup>2</sup>

16. Bonnie Belle Quiroz, M.D.: On June 26, 2008, Permanente Medical Group Ophthalmologist Dr. Quiroz wrote that respondent's ocular condition caused her sensitivity "to glare on the computer and fatigue with reading, especially small print." Dr. Quiroz noted respondent was capable of performing these activities but "needs a break to rest the eyes when they become fatigued. She would be best served by including a 5 minute break each hour or as needed."

17. Mark J. Mannis, M.D.: On October 29, 2008, Dr. Mannis, Chair of the Department of Ophthalmology & Vision Science at the University of California, Davis, wrote to CDCR's Office of Wellness about respondent's eye condition. He noted the following:

She has only one functional eye, in which there is a cataract. While she is certainly able to fulfill the requirements of her employment, her visual circumstance dictates that she has a variety of duties that allow her to not work constantly at the computer screen. In addition, she would be greatly aided in her work by the ability to use a fluorescent highlighter for both work and in testing situations, as well as a magnifying glass. These simple aids will allow her to both complete her work more efficiently, as well as to advance through the test taking procedures.

18. Thomas P. Kidwell, M.D.: On April 16, 2014, Dr. Kidwell of the Permanente Medical Group, Ophthalmology, wrote a letter to respondent to "document your vision limitations for work."

#### **Past Ocular history**

Retinopathy of Prematurity at birth both eyes  
Hx severe glaucoma right eye in 1960's resulting in complete blindness and eventual enucleation of the right eye and replacement with an ocular prosthesis  
Cataract surgery left eye September 2010  
Macular retinoschisis left eye with best corrected vision 20/80

---

<sup>2</sup> Government Code section 11513, subdivision (d), in relevant part, provides:

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

### **Current Visual Status**

Your vision in your left eye on your last visit with me was 20/80 which is not legally blind but is certainly well below normal vision. With your macular retinoschisis you have limited resolution so you do need reasonable work accommodations for partial visual impairment such as (but not limited to) large screen monitors (27" or larger) for our work computer, glare screens and dictation software...

(Bolding original.)

19. On May 12, 2014, Dr. Kidwell signed a Work Status Report which outlined the following permanent restrictions for respondent:

Ms. Disney has only one eye and has limited vision in that eye (20/100). She is experiencing headaches and glare with reading longer than 15 minutes at a time. She needs reasonable accommodation to be able to limit her reading with magnifying aids to no more than 15 minutes out of every hour. Sensitivity to glare and eye strain with fine print are expected with her eye disability and need to be accommodated in the workplace.

20. Guruswami Giri, M.D.: On April 7, 2015, Dr. Giri, of Kaiser Permanente, signed a Work Status Report placing respondent on modified activity at home and at work from March 9, 2015, through March 11, 2016. Specifically, Dr. Giri noted that, due to her limited vision, respondent "is concerned with hurrying and running to and from the bus and falling on uneven pavement. She may be accommodated by 10-15 minutes before scheduled departure time and after scheduled arrival time...."

21. Dr. McClanahan, M.D.: On April 20, 2015, Dr. McClanahan of Kaiser Permanente signed a Work Status Report in which he provided permanent restrictions for respondent as follows:

Ms. Disney has only one eye and has limited vision in that eye (20/100). She needs reasonable work accommodation to be able to limit her reading with magnification aids to no more than 10 minutes per hour. Sensitivity to glare and eye strain with fine print are expected with he [sic] eye disability and need to be accommodated in the workplace.

22. Krister L. Holmberg, O.D.: On June 29, 2015, Dr. Holmberg, Arena Eye Care, Inc. wrote a letter on respondent's behalf, which indicated "she suffers from extreme light sensitivity." He believed respondent would benefit from wearing "computer glasses made with 'Bluetech' lenses," to help her with "glare from backlit LED screens . . . and fluorescent lights."

23. Vong Mun Lee, M.D.: Dr. Lee, of Kaiser Permanente, prepared an Activity Status Report for respondent dated June 25, 2015, in which he indicated she qualified for Family Medical Leave Act (FMLA) from June 18 through September 30, 2015. On September 22, 2015, Dr. Lee reported that applicant qualified for FMLA from October 1 through December 31, 2015.<sup>3</sup>

24. Dr. McClanahan: On September 29, 2015, Dr. McClanahan signed the Physician's Report in support of respondent's Application (Finding 3). Dr. McClanahan elaborated on his opinion that respondent was substantially and permanently incapacitated from the performance of her usual SSA job duties as follows:

Linda is unable to review and approve invoices for payments, to maintain data in the OLA's database or provide reports related to contract to the CDCR staff due to her inability to stare at her computer screen for prolonged periods of time. She is unable to provide resources and consultations to OLA Staff Counsel for negotiations/preparations. She cannot consistently prepare and submit contracts and amendment requests packages, or review and analyze, compose or prepare contractor evaluations for submission to DGS. She is unable to work under fluorescent lighting due to migraines and cannot adequately prepare documents throughout the day due to prolonged exposure to the computer lights.

25. Dr. Holmberg: In a May 3, 2016 letter to CalPERS Disability Retirement, Dr. Holmberg wrote that he had annually examined respondent's eyes since July 8, 2013, and that:

She has a prosthetic right eye and limited vision in her left eye due to retinopathy of prematurity and glare status post cataract surgery. She deals with a tremendous amount of glare and it limits her ability to function at work. Fluorescent lights, LED lights and LED backlit screens are particularly difficult. Magnification only makes that worse. To date filters and light control have only provided limited help. She should be limited to no more than 15 minutes on the computer per hour. . .

---

<sup>3</sup> On June 18, 2015, CDCR's Division of Human Resources notified respondent that she was entitled to FMLA, based on her "own serious health condition."

26. Dr. Giri: In his May 6, 2016 letter to respondent, Dr. Giri wrote that she “has poor vision in her left eye of 20/70 and her visual fields show generalized constriction and large central scotomas which could impair her activities of daily living....”

27. Reasonable Accommodations: In 2014 and 2015, respondent had frequent contact by email with Rachel Young, CDCR’s RTW Coordinator. Their emails discussed ways in which respondent might be accommodated at work due to her eye strain, fatigue and headaches from computer work and glare (e.g., by use of larger monitors, magnification settings, bulb wattage and color, suggested use of dictation software and services from the Low Vision Clinic of the Society for the Blind). In her February 6, 2015 email to Ms. Young, respondent noted that her managers had ordered a 30-inch monitor for her, over her objection: “Hence, my ER trip on 10/8/14.”<sup>4</sup>

On May 6, 2015, Ms. Young emailed respondent and indicated she was looking to see if there were other jobs “available that would not require more than 10 minutes of reading every hour, since that restriction prevents you from being able to fully perform the duties of your current SSA job.” In her email response, respondent advised that she was “breaking up the reading/computer into 10 minute bits,” but still had to “go home early several times due to blurriness and headaches. . .”

28. Respondent’s Testimony: In her testimony, respondent recounted her extreme glare sensitivity and the many ways in which she has tried to ameliorate this problem so she could continue working. She accepted accommodations offered by her employer, sought assistance from the Society for the Blind, and “burned through” many hours of accumulated vacation time to rest at home so she could continue working. Respondent even tried using a non-visual screen reader, but this could not help her perform her job duties. The databases used by OLA had many small boxes to fill. While IT personnel changed her computer settings down to reduce the glare, this actually took the sharpness away and made the databases look grayer and harder to see. This caused her to make errors in her work; for example, by transposing numbers or putting information in the wrong box.

Respondent emphasized that she is not a person who simply does not want to work. Rather, she hoped to work for several more years. Eventually, respondent realized that her quality of life while working was too poor to continue and her doctor suggested disability retirement. Respondent acknowledged that she does drive her car during daylight hours, but noted that she restricts herself to familiar roads. In respondent’s opinion, the artificial or blue light from computers is worse on her eyes than the natural light in which she is able to drive her car. Respondent realizes that the day will soon come when she will not be able to drive. She now tries to avoid the computer and does not use social media or other on-line services.

---

<sup>4</sup> No medical records pertaining to this emergency room visit were submitted.

29. Testimony of Ms. Hinrichsen: In 2009 when respondent first began at OLA, Ms. Hinrichsen was an Associate Governmental Program Analyst. Ms. Hinrichsen was not respondent's supervisor, but trained her how to do contracts with outside law firms to handle lawsuits filed by CDCR inmates. For the first two years, respondent did her job well. She then began not being able to read information off the computer or various templates and OLA databases needed to create the contracts. Supervisors noticed that respondent was making mistakes and Ms. Hinrichsen had to redo some of respondent's reports due to numerous errors. Ms. Hinrichsen advocated for respondent by telling supervisors that respondent had a physical, rather than a cognitive, problem. Respondent was then moved to the Public Records Act unit, but this work also involved reading "tiny print" off of computer screens, which was necessary to redact documents. Ms. Hinrichsen accompanied respondent to the Kaiser Emergency Room one time due to intense pain respondent felt in her head while working. In Ms. Hinrichsen's observation, CDCR's RTW Coordinator tried many avenues to accommodate respondent's visual issues, but nothing worked.

*Dr. Serdahl's Testimony*

30. In his testimony, Dr. Serdahl confirmed the opinions in his IME Report, including his belief that respondent was capable of performing her SSA job duties with appropriate lighting and magnification, and with a modified work schedule consisting of a short break every hour to rest her eyes and avoid strain. He had not had the opportunity to review some of respondent's medical records described above, and was given time to do so. After review, Dr. Serdahl indicated that these reports did not change his opinion. For example, Dr. Mannis was Dr. Serdahl's mentor. Dr. Mannis' report (Finding 17) was written before respondent's 2010 cataract surgery, after which respondent should have had an increased level of brightness and possibly of acuity.

Dr. Serdahl acknowledged that other doctors had found the acuity in respondent's left eye to range from 20/70 to 20/100, compared to his finding of 20/60. Such variation in acuity is not unusual and can be somewhat subjective, depending upon the patient's health and cooperation with the examination. He also noted that inter-ocular lenses used in cataract surgery are designed to filter out damaging ultraviolet light. However, he acknowledged that people with ROP do experience complaints of glare and that ROP can make people more susceptible to glare.

Dr. Serdahl did not modify the opinions expressed in his Supplemental Report. In his testimony, Dr. Serdahl seemed unaware of the actual computer reading restriction of 10 minutes per hour followed by CDCR or of its unsuccessful efforts to accommodate respondent's visual conditions.

//

## Discussion

31. The usual job duties of an OLA SSA are heavily dependent on the SSA's near acuity viewing ability, which is "frequently" used to review, analyze and complete documents, contracts and Public Record Act requests in CDCR's unique computer databases. Respondent's testimony about the need for accommodation for her ophthalmological condition was amply corroborated by the medical reports outlined above. Based on these reports, CDCR accommodated medical restrictions imposed on respondent's computer usage. In her last year of employment, CDCR complied with Dr. McClanahan's restriction to 10 minutes of reading on the computer per hour. Respondent credibly testified about CDCR's repeated efforts to accommodate her ophthalmological condition. Her testimony about these ultimately unsuccessful efforts was persuasively corroborated by Ms. Hinrichsen.

While respondent did not call a medical expert to testify on her behalf, Dr. Serdahl's reports and testimony constitute competent medical opinion upon which respondent's asserted disability can be analyzed. In his Supplemental Report, Dr. Serdahl clarified his initial IME opinion that respondent was not substantially incapacitated from the performance of her usual job duties. Specifically, Dr. Serdahl noted that this conclusion was premised on his understanding that respondent was "using screen magnification with variable lighting to do her clerical job..." Using these accommodations, Dr. Serdahl opined that respondent should be able to perform all aspects of her job. However, "if these accommodations were unavailable, my opinion is that the member would be unable to perform her duties for her job and would need to file for disability."

When all the evidence is considered, respondent persuasively established that, despite CDCR's efforts, the accommodations provided were never sufficient to enable her to perform her usual job duties. Dr. Serdahl's opinion that respondent could substantially perform her usual job duties relied upon the assumption that CDCR could provide her with adequate reasonable accommodations. He clarified his original opinion by acknowledging that, if such accommodations could not be provided, respondent should file for disability retirement. Because CDCR was not able to provide respondent with accommodations that would allow her to perform her job duties, Dr. Serdahl's opinion that, absent such accommodations, respondent was eligible for disability retirement becomes relevant. Consequently, competent medical opinion supports a conclusion that respondent is incapacitated for the performance of her usual duties as an SSA for CDCR and that her Application should be granted.

## LEGAL CONCLUSIONS

1. Respondent has the burden of proving her eligibility for disability retirement benefits by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052, fn. 5.) Evidence that is deemed to preponderate must amount to "substantial evidence." (*Weiser v. Board of Retirement* (1984) 152 Cal.App.3d 775, 783.)

To be “substantial,” evidence must be reasonable in nature, credible, and of solid value. (*In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.)

2. Government Code section 20026 provides, in pertinent part:

“Disability” and “incapacity for performance of duty” as the basis of retirement, mean disability of permanent or extended and uncertain duration, as determined by the board ... on the basis of competent medical opinion.

3. Government Code section 21156, subdivision (a), provides, in pertinent part:

(1) If the medical examination and other available information show to the satisfaction of the board ... that the member in the state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability ....

(2) In determining whether a member is eligible to retire for disability, the board ... shall make a determination on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process.

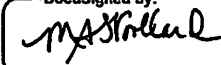
4. The courts have interpreted the phrase “incapacitated for the performance of duty” to mean “the *substantial* inability of the applicant to perform his usual duties.” (*Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 877, italics original.) It is not necessary that the person be able to perform any and all duties since public policy supports employment and utilization of the disabled. (*Schrier v. San Mateo County Employees' Retirement Association* (1983) 142 Cal.App.3d 957, 961.) Instead, the frequency with which the duties he cannot perform are usually performed, as well as the general composition of duties he can perform, must be considered. (*Mansperger v. Public Employees' Retirement System, supra*, 6 Cal.App.3d at pp. 876-877 [while applicant was unable to lift or carry heavy objects due to his disability, “the necessity that a fish and game warden carry a heavy object alone is a remote occurrence”].)

5. In summary, when all the evidence is considered, respondent established that appropriate accommodations were never made available to her so she could perform her usual job duties, which were heavily dependent on her near visual acuity. Consequently, Dr. Serdahl's competent medical opinion as expressed in his Supplemental Report establishes that respondent is not able to perform her usual job duties as a Staff Services Analyst for CDCR and that she is incapacitated for the performance of duty, on the basis of an ophthalmological condition. Therefore, her application for disability retirement should be granted.

ORDER

The application for disability retirement filed by Linda Disney is GRANTED.

DATED: January 5, 2017

DocuSigned by:  
  
F0977A776F92483...

MARILYN A. WOOLLARD  
Administrative Law Judge  
Office of Administrative Hearings