ATTACHMENT C

RESPONDENT’S ARGUMENT
Respondent Santosh Kumari submits her response to the proposed decision of the Administrative Law Judge (ALJ) in this matter and requests that the Board of Administration of the California Public Employees Retirement System (CalPERS) decline to adopt the decision.

Ms. Kumari respectfully submits that the proposed decision erred in finding that Ms. Kumari failed to demonstrate that she was substantially incapacitated from performing her job duties.

RELEVANT FACTS

At the time of her separation, Ms. Kumari served as a PTA with Napa State Hospital. The position required constant walking, standing, and sitting, and required frequent running, squatting, reaching, pushing, and pulling. Ms. Kumari was also required to frequently work...
overtime shifts. On November 9, 2010, while serving a patient, the patient grew agitated, pushing an ice bucket into Ms. Kumari’s chest. In an effort to avoid being struck by the bucket, Ms. Kumari quickly jumped back, twisting her left foot.

Ms. Kumari was diagnosed with a strain or sprain of her left foot and ankle and was placed in a below the knee cast for six weeks in partial weight bearing status with crutches. After using a walker boot for a period of time, she attempted to return to work.

Upon Ms. Kumari’s return to work, her orthopedic pain and swelling increased. She was unable to continue working and took multiple leaves of absence. She was referred to physical therapy, acupuncture, and to a podiatrist. At one point in 2012, Ms. Kumari was required to work a double shift and was treated for nausea, headache, high blood pressure, and lightheadedness in the emergency room. Her symptoms were triggered by the pain in her foot. Following this incident, Ms. Kumari provided her employer with doctors’ notes indicating she could not work overtime. In 2012, her employer accommodated her with a modified work schedule. However, in 2013, her employer discontinued the accommodation.

Ms. Kumari experienced debilitating stress when she returned to modified duty at work, finding herself unable to learn new duties due to her stress and depression. Doctor David Green wrote letters in April 2013 indicating Ms. Kumari could only work morning shifts on a psychological basis.

From May 13, 2013 to November 14, 2013, Ms. Kumari took an unpaid leave of absence from work in order to undergo treatment for Hepatitis C, which included interferon and ribavirin injections. The cirrhosis of her liver was in part caused by the pain medication she was taking for her podiatric injury. Due to the severe side effects from her liver treatment, Ms. Kumari was essentially bedridden and stopped receiving treatment for her podiatric injury. Following this unpaid leave of absence, Ms. Kumari was still not well enough to return to work, and separated from her employment on November 15, 2013. Following her separation, Ms. Kumari experienced exacerbated pain to her left foot, significant depression, and complications resulting
from her Hepatitis C treatment. These medical conditions made it impossible for Ms. Kumari to perform the essential functions of her position.

I. THE EVIDENCE PRESENTED DEMONSTRATED THAT MS. KUMARI WAS SUBSTANTIALLY INCAPACITATED FROM PERFORMING HER ESSENTIAL JOB DUTIES

A. Dr. Rubin’s Testimony

Dr. Rubin’s testimony established that Ms. Kumari was unable to perform the essential functions of her position during the period in question. Dr. Rubin testified that from January 2013 to November 2013 Ms. Kumari could not work because of the severe fatigue and malaise associated with Ms. Kumari’s hepatitis C treatment. During this time, Ms. Kumari experienced depression, frequent fevers, and was essentially bedridden. Depression exacerbated pain in her foot and in other parts of her body.

Following Ms. Kumari’s separation from her employment at the end of 2013, her condition did not improve. In March 2014, Ms. Kumari attempted to return to work, but Dr. Rubin still felt that she was unable to work a full schedule. Ms. Kumari continued to experience significant fatigue and active depression. Dr. Rubin again opined that Ms. Kumari’s multiple diagnoses were complicating each other; particularly, her depression was impacting her chronic foot pain and preventing her symptoms from improving.

Importantly, as the Proposed Decision correctly notes, Dr. Rubin testified that there was no substantial change in Ms. Kumari’s condition from 2013 to 2015. He opined that because Ms. Kumari’s continued symptoms failed to improve over years of treatment, he found her substantially incapacitated from performing her job duties. Mr. Kumari suffered no additional trauma to her foot, nor any major significant life issue, aside from being unable to return to work.

B. Dr. Woodcox’s Testimony

The proposed decision errs in its failure to make the reasonable inference that Ms. Kumari was substantially incapacitated because of RSD on the date of her separation in 2013.

Dr. Woodcox’s testimony established that Ms. Kumari’s foot injury substantially incapacitated her from performing her job duties. Dr. Woodcox testified that the diagnosis of RSD had not
been considered until Ms. Kumari's evaluation. Because of Ms. Kumari's podiatric conditions, Dr. Woodcox found that she was “unable to perform her essential job requirements of standing, walking, pushing, pulling, walking on uneven terrain, squatting or climbing and lifting over 10 pounds as required by her employer.”

Dr. Woodcox could not opine on the exact date Ms. Kumari's disability began, but he unequivocally found that she was disabled on the date of his examination. Ms. Kumari's podiatric complaints were substantially the same from 2013 through 2015. On November 16, 2010, she was diagnosed with sprain or strain of foot, which did not improve despite the casting of her foot, rest, and stretching. Dr. Woodcox's found in his report that Ms. Kumari suffered from plantar fasciitis in her left foot; similarly, on August 5, 2013, Ms. Kumari was noted to have “chronic plantar fasciitis with lesser metatarsalgia left foot.” It was also noted on August 5, 2013, that Ms. Kumari experienced diffuse pain across her left midfoot, and the lesser metatarsal area of her left foot.” This finding is consistent with Dr. Woodcox's 2015 findings that there was “diffuse moderate-to-severe tenderness in her left forefoot and digits which extends proximally to her left ankle.” On October 20, 2014, Dr. Rubin noted that Ms. Kumari had left foot pain and had “issues with chronic foot pains before”; he testified that no treatment worked in improving her chronic foot pain. Dr. Woodcox testified that the delay in treating Complex Regional Pain Syndrome leads to the decreased success rate of potential treatments for the condition, suggesting that Ms. Kumari did in fact suffer from RSD as of 2013.

Taking together Dr. Woodcox's report and testimony with Dr. Rubin's testimony, Ms. Kumari established by a preponderance of the evidence that her podiatric symptoms had not significantly changed from the period of 2013 to 2015 and that she was thus substantially incapacitated from performing her job duties at the time of her application in 2013.

C. Dr. Lopez's IME Report

CalPERS offered Dr. Alberto G. Lopez's April 19, 2017 Independent Medical Evaluation as administrative hearsay but did not call Dr. Lopez as a witness. Dr. Lopez evaluated Ms. Kumari's psychiatric condition. Dr. Lopez found that Ms. Kumari was substantially
incapacitated from performing her essential job duties because she was in a “severely debilitated state of depression.” An essential function of Ms. Kumari’s position, under “Provision of Care” is “[t]akes appropriate action in emergency situations based on unit and hospital procedures.” In regards to this essential function, Dr. Lopez specifically highlighted:

Perhaps most importantly, this examinee will not be able to respond to security concerns. When she was on the job, Ms. Kumari would sometimes “freeze” and be unable to respond to situations. This is still the case now. She is motorically slow and will not be able to rapidly respond to dangerous situations appropriately.

Ms. Kumari corroborated this finding by credibly testifying that prior to her retirement she was unable to quickly respond to emergency situations. She testified that during emergencies she would “freeze up” and that coworkers would ask her why she was simply “standing there.”

Dr. Lopez’s findings demonstrate that on the basis of her psychiatric condition, Ms. Kumari was not able to perform the essential function of her position by appropriately responding to emergency situations at the time of her separation.

Additionally, Dr. Lopez observed many of the symptoms that Ms. Goswami and Ms. Kumari testified she was experiencing at the time of Ms. Kumari’s separation. For instance, he noted that Ms. Kumari’s personal hygiene was inadequate, and that she would not be able to provide for the grooming and hygiene of her patients. Ms. Goswami testified that her mother was unable to maintain her personal hygiene beginning in 2013. Additionally, he found that because she was not able to take care of her own financial affairs, such as paying her bills, she would be unable to “adequately document a patient’s activities and behaviors.” Ms. Goswami and Ms. Kumari testified that at the time of her separation, Ms. Kumari was unable to pay her bills, or even respond to correspondence regarding her initial disability retirement application.

Dr. Lopez concluded that Ms. Kumari was not substantially incapacitated due to her psychiatric condition on April 20, 2014. In reaching this conclusion, he relied solely on an April 20, 2014 report authored by a Dr. Goldfield. The report by Dr. Goldfield is not in evidence and is
hearsay. Neither Dr. Lopez nor Dr. Goldfield testified. Respondent did not have an opportunity
to cross-examine Dr. Lopez regarding his reliance on a report by a different physician. Because
this finding introduces another layer of uncorroborated hearsay, the reliance on Dr. Goldfield’s
report for the conclusion that Ms. Kumari was not substantially incapacitated on April 20, 2014
would be unfounded.

CONCLUSION

The evidence presented demonstrated that at the time of Ms. Kumari’s separation from
her employment on November 15, 2013 through the time of her application on April 14, 2015,
she was substantially incapacitated from performing her job duties required of a PTA. She
respectfully requests that Board decline to adopt the proposed decision and her application for
disability retirement be approved.

DATED: September 7, 2017

LAW OFFICES OF JOHN F. MARTIN
A Professional Corporation

By:

JULIA LUM, ESQ.
Attorneys for Respondent
Santosh Kumari
**FAX TRANSMISSION**

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                Agency case No.: 2016-0245 |
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