ATTACHMENT A

THE PROPOSED DECISION
BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Application for
Disability Retirement of:

JULIANA D. CARVAJAL,
Respondent,

and

CALIFORNIA DEPARTMENT OF
INDUSTRIAL RELATIONS,
Respondent.

Case No. 2016-0912
OAH No. 2016120820

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of
Administrative Hearings, heard this matter on October 19, 2017, in Oakland, California.

Staff Attorney Charles Glauberman represented the California Public Employees’
Retirement System (CalPERS).

There was no appearance by or on behalf of respondents Juliana D. Carvajal or
California Department of Industrial Relations (DIR). This matter proceeded as a default
proceeding pursuant to Government Code section 11520.

The matter was submitted for decision on October 19, 2017.

FACTUAL FINDINGS

1. Respondent Juliana D. Carvajal was employed as an Office Technician with
the California Department of Industrial Relations. By virtue of her employment, respondent
is a state miscellaneous member of CalPERS subject to Government Code section 21150.
2. On January 13, 2016, respondent submitted an application for service retirement pending disability retirement, identifying her disability as “severe ongoing pain in my neck, shoulders, hands, wrists, back, hips, knees, legs, numbness in my hands and feet. Frequent anxiety attacks and headache.” Respondent retired for service effective October 8, 2015.

3. On May 27, 2016, CalPERS notified respondent that it has reviewed reports prepared by respondent’s acupuncturist/chiropractor and of an orthopedic surgeon independent medical evaluation, and determined that respondent was not disabled from performance of her job duties as an Office Technician. Respondent’s application was denied. Respondent filed an appeal of the denial on June 30, 2016.

4. Juon-Kin Kenneth Pong, M.D., is the orthopedic surgeon who performed an independent medical evaluation of respondent in connection to her application. Dr. Pong prepared a report and testified at the hearing. He examined respondent and reviewed her medical records. He found minimal objective findings of any orthopedic injuries in her medical records. Respondent reported full body pain, but was unable to provide a verbal medical history. Dr. Pong perceived that respondent resisted testing. He concluded that respondent is not disabled from performing her usual duties based on any orthopedic condition.

5. Respondent did not appear at the hearing and presented no evidence in support of her application. Accordingly, her application must be denied.

LEGAL CONCLUSIONS

1. Pursuant to Government Code section 21156, subdivision (a), “[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.”

2. The applicant for disability retirement has the burden of proving, by competent medical evidence, that she is disabled from performing the usual duties of her position. (Harmon v. Board of Retirement of San Mateo County (1976) 62 Cal.App.3d 689, 691.)

3. As set forth in Finding 5, respondent did not appear at the hearing and did not present competent medial evidence in support of her application. She has not met her burden of establishing that she is incapacitated from performing her usual duties as an Office Technician for the California Department of Industrial Relations.
ORDER

Respondent Juliana D. Carvajal's application for disability retirement is denied.

DATED: November 7, 2017

KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings