

**ATTACHMENT C**

**RESPONDENT'S ARGUMENT**

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JAN 22 2019

Re: In the Matter of Reinstatement from Disability Retirement of STACEY L. VANLENTE,  
Respondent, and CALIFORNIA STATE UNIVERSITY CHANCELLOR'S OFFICE, Respondent.  
REQUEST TO DESIGNATE DECISION AS PRECEDENTIAL DECISION

Dear Ms. Swedensky:

Respondent Stacey Vanlente, through this office, requests the Board designate the attached decision as precedent. The Proposed Decision contains a cogent description of the burden of proof in matters seeking reinstatement from disability retirement. The decision emphasizes in making the determination of reinstatement from disability the importance of consideration of actual job duties.

In the Legal Conclusions the proposed decision cites to Precedential Decision 99-03, as support for its findings. Decision 99-03, does contain a statement of applicable law, but finds the employee capable of returning to work and therefore, not entitled to continued disability retirement. The precedential decision is therefore, inapposite. More importantly, the proposed decision cites to *Lillian F. v. Superior Court*, (1980) 160 Cal.App.3d 314, 320, as support for the applicable preponderance of evidence standard necessary to establish the discontinuance of incapacity. The proposed decision finds the employee incapable of performing her usual duties and provides future litigants and decision makers with a clear statement of applicable law and the standard that applies to the burden of proof.

We seek to establish this decision as a precedential decision based upon the clear statement of law and the citation to legal authority as to the burdens of proof and the level of proof necessary to establish reinstatement from disability retirement.

Respectfully submitted,

Ellen Mendelson/Attorney for Stacey Vanlente

Encl. Proposed Decision  
cc.. R. Coffey, Esq.  
S. Vanlente

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

In the Matter of the Involuntary Reinstatement  
from Disability Retirement of:

STACEY L. VAN LENTE,

Respondent,

and

CALIFORNIA STATE UNIVERSITY  
CHANCELLOR'S OFFICE.

Respondent.

Case No. 2018-0390

OAH No. 2018061036

**PROPOSED DECISION**

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on December 12, 2018, in Sacramento, California.

Rory J. Coffey, Senior Attorney, represented the California Public Employees' Retirement System (CalPERS).

Attorney Ellen Mendelson of the Law Office of Ellen Mendelson, P.C., represented respondent Stacy L. Van Lente, who was present throughout the hearing.

There was no appearance by or on behalf of respondent California State University Chancellor's Office, its default was entered, and this matter proceeded as a default proceeding against that respondent pursuant to Government Code section 11520.

Evidence was received, and the record was kept open to receive an Amended Proof of Service showing service of the jurisdictional documents on respondent California State University Chancellor's Office by certified mail. The Amended Proof of Service is marked as Exhibit 8a, and is admitted for jurisdictional purposes only. The record was closed, and the matter was submitted for decision on December 21, 2018.

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM  
FILED DEC 3, 2018  
CDS

## SUMMARY

CalPERS's decision to have Ms. Van Lente involuntarily reinstated to her former position as a System Analyst with respondent California State University Chancellor's Office is based solely on the medical opinion of Robert Ansel, M.D. When all the medical evidence is considered, Dr. Ansel's conflicting medical report and hearing testimony did not constitute persuasive medical evidence that Ms. Van Lente is no longer substantially incapacitated for the performance of her former job duties due to a neurological (headaches) condition. Therefore, her appeal from CalPERS's determination that she is no longer substantially incapacitated and should be involuntarily reinstated to her former position as a System Analyst should be granted.

## FACTUAL FINDINGS

### *Procedural Background*

1. On July 17, 2013, Ms. Van Lente signed a Disability Retirement Election Application seeking a disability retirement, which CalPERS received the following week. She identified her specific disability as "severe, debilitating migraines." She explained she has suffered migraines "since childhood," but they worsened after she was in a car accident in June 2007. She described her migraines as being of an "unknown origin," but stated "both parents and grandparents suffered" migraines. She also stated her migraines affect her ability to work because they render her "unable to concentrate," and require her to "take many breaks, go home early & call in sick, miss deadlines."

2. On September 24, 2014, CalPERS sent Ms. Van Lente a letter approving her application for a disability retirement because "you have been found substantially incapacitated from the performance of your usual job duties as a System Analyst with the California State University Chancellor's Office, based upon your neurological (headaches) condition." The letter advised:

You cannot be employed as an active member any longer in your former position without being reinstated from retirement. You may be reexamined periodically to determine your qualification for reinstatement if you are under the minimum age for service retirement. Reinstatement to your former or other positions requires prior clearance by CalPERS. Upon request for reinstatement, the employer is contacted and requested to provide a duty statement for the position available. CalPERS will utilize the duty statement and medical information provided to determine if you qualify for reinstatement. CalPERS does not determine requests for reasonable accommodation. If you believe you can perform in a position or schedule which would be a reasonable

accommodation to your disability, that matter is resolved between you and your employer.

3. On July 19, 2017, CalPERS notified Ms. Van Lente that her "disability retirement benefits are currently under review to determine if you continue to meet the qualifications to receive disability retirement benefits pursuant to Government Code section 21192." Seven months later, CalPERS notified Ms. Van Lente that it had completed its review, which included a review of "reports prepared by Robert Ansel, M.D. and Nicklesh Thakur, D.O." Based on those reports, CalPERS determined that Ms. Van Lente is "no longer substantially incapacitated from the performance of [her] job duties as a System Analyst with California State University Chancellor's Office due to [her] neurological (headaches) condition," and that she "will be reinstated to [her] former position."

4. Ms. Van Lente timely appealed CalPERS's determination. On June 25, 2018, Anthony Suine, Chief of the Benefit Services Division of CalPERS, signed the Accusation seeking a determination of whether Ms. Van Lente is substantially incapacitated for the performance of her former job duties and whether she should be reinstated to her former position.

*Usual Duties of a System Analyst*

5. The Position Description for a System Analyst with the California State University Chancellor's Office describes the purpose of the position as follows:

As a subject matter expert of the [Centers for Medicare and Medicaid Services] Labor Cost Distribution, this position is responsible for completion of system analysis, planning, design, documentation and testing for the Oracle/PeopleSoft HCM 8.9 application. This complex project encompasses application support and upgrade activities for 23 campuses and the CSU Chancellor's office, as well as integration with other third-party and/or internal systems.

6. The Position Description provides the following list of tasks or duties for the position:

- Provide functional analysis and solutions for the Labor Cost Distribution SME (Subject Matter Expert) team utilizing third party software query language tools. Work with other SME teams to understand and address issues that may have cross module impact.
- Provide functional support for the Labor Cost Distribution module of the CSU's Oracle/PeopleSoft HCM application, including customizations, upgrades, updates & fixes, specifications, etc. This includes identifying requirements for

system configuration and enhancements, participating in the development of time & cost estimates for proposed customizations, upgrades or other project activity, application testing and coordinating discussions with HUG (HR User Group) and HUG Sub-committees leading to consensus on enhanced business processes and best practices.

- Develop test scripts to be used in testing Baseline Releases and CSU customizations.
- Conduct application testing (at all levels, unit, system and integration) to ensure quality and standards are met.
- Produce deliverables to ensure quality standards and expectations are met.
- Develop & maintain all documentation needed to support the CSU Oracle/PeopleSoft HCM system, including Specification documents (requirements & design for CSU modifications), Configuration Guides, Test Scripts, Business Process Diagrams, Baseline Release documentation, Analysis/recommendation documents to support HUG (Human Resources User Group) review & approval, Remedy updates that document Help Desk case activity, etc.
- Coordinate development efforts with designated application manager as well as other SME team members.
- Provide production support for the 23 CSU campuses by reviewing & troubleshooting campus systems problems reported through Remedy Help Desk cases.
- Provide support for the CSU campuses by delivering regularly scheduled CMS Baseline Releases consisting of Oracle/PeopleSoft & CSU developed updates & fixes.
- Undertake special projects as directed (including working with other SME teams to facilitate cross training and coverage of all application areas).

(Spelling original.)

7. The position is described as involving "sedentary work." It "involves mainly sitting. Walking and standing are minimal. Lifting is limited to lightweight objects (10 pounds or less)."

#### *Medical Evidence*

#### INITIAL DETERMINATION OF SUBSTANTIAL INCAPACITY

8. Ms. Van Lente was originally granted a disability retirement based on an Independent Medical Evaluation (IME) performed by Stephen Dell, M.D., on May 13, 2014. Dr. Dell is a board-certified neurosurgeon who was asked by CalPERS to evaluate Ms. Van

Lente and determine whether she was substantially incapacitated for the performance of the usual duties of her former position as a System Analyst due to a neurological (headaches) condition.

9. Dr. Dell documented Ms. Van Lente's chief complaint at the time of the IME in his subsequent report as follows:

The examinee's treatment with William Gunther, D.C. since 1197 [sic] and from Nicklesh Thakur, D.O. (since 2007), have been reviewed above.

The examinee has had physical therapy intermittently, which provided little benefit. She remains out of work. She denies other related or unrelated, industrial or non-industrial significant accidents or injuries, with the exception of the rear-ending motor vehicle accident described above.

Ms. Van Lente's work involved sitting virtually her entire workday, standing and walking approximately one hour. She would occasionally bend, stoop and squat. Both hands were used for simple and firm grasping. The examinee denies other industrial exposure.

And Dr. Dell documented Ms. Van Lente's symptoms as follows:

Ms. Van Lente's symptoms are of pain extending from the temporal region, above the orbits and transversely in the low frontal region. As well, there is paravertebral pain from the skull base to the cervicothoracic junction and to a small degree laterally involving trapezius and supraspinatus. Additionally, there is a secondary pain involving the right shoulder girdle, and paravertebrally posteriorly in the mid-caudal thoracic and mid-lumbar areas. These complaints remain unchanged, impairing work and social life. She describes the cephalgia as being unilateral at any time, but shifting from left to right. The pain is dull in the skull base, but sharp in character over the frontal region.

The examinee's pain began gradually, but is now constant, moderate ([Visual Analog Scale] 6), although intermittently severe and made worse by turning the head and at times while sitting. Pain at times will prevent and interrupt sleep. Similarly, position will affect her pain at times. Cold or wet weather may increase her migraine, and she notes neck stiffness and migraine headaches that last from hours to days.

In all, the examinee estimates she suffers 8-9 migraines per month of sufficient strength to require medications (pain level of VAS 8-10). Her constant lower intensity pain (VAS 3-4) is not treated with medications, generally. Sitting for long periods in the same position will aggravate her condition, as will noise and fluorescent lighting.

Ms. Van Lente notes that there was hypesthesia in the arms and legs while she was taking Topamax (VAS 8), but since discontinuing that drug, such has disappeared. She notes a dysesthetic sensation in the rostral neck and right shoulder. Very severe weakness is present in the neck, when after Botox injections she is unable to elevate her head (VAS 10). She also notes left ankle weakness after her injury, which consisted in multiple fractures after a fall in 2011 (see: below). The examinee describes the left ankle as "dropping" when tripping and falling over the past two years. Weakness is constant and unresponsive to circumstance.

There is no association of symptoms or incoordination. She has had some autonomic dysfunction after her gallbladder surgery, but these complaints occur only upon vomiting. There is no association of autonomic complaints with her other symptoms. The examinee denies sexual dysfunction.

10. Dr. Dell noted the following about Ms. Van Lente's neurological examination:

Mental Status: Awake, alert and oriented to time, place and person. Speech, comprehension and repetition, and command of English is normal. The interview and examination were conducted in English. Recall and mentation are grossly intact. Waddell's signs are absent.

Mini-mental examination is unremarkable, including serial 7s, repetition, reverse-spelling ("WORLD-DLROW") and recall of three of four objects at five and 10 minutes. The examinee confused "boat" for "book," which was responsible for her minor error and recall.

Cranial Nerves:

I: Normal to cinnamon bilaterally.

II: [Visual acuity] 20/30-2 [both eyes] without lenses. The examinee does not wear reading spectacles. Visual fields are



full by confrontation. Fundusoscopic examination: discs flat, normal optic nerve head and vessels, normal arterial and venous anatomy and arteriovenous pulses, no papilledema, hemorrhages or exudates OU.

III/IV/VI: Gaze full ROM, no ptosis. PER 2.8 mm. [Rancho Los Amigos Levels of Cognitive Functioning]. [Optokinetic nystagmus] is normal all directions OU. Strabismus is absent.

V: Intact to pin and light touch. Corneal reflex is normal bilaterally. Muscles of mastication (masseter, pterygoid) are fully strong bilaterally.

VII: Normal facial expression. Taste intact to sweet/sour over anterior 2/3 tongue bilaterally.

VIII: Hearing intact to finger rub and watch tick AU. Tinnitus is denied. [Use of a tuning fork demonstrates air conduction is greater than bone conduction in both ears] and Rinne shows no lateralization. Hallpike maneuver is negative.

IX/X: Sternocleidomastoid strength and bulk normal bilaterally. Shoulder shrug intact bilaterally.

XII: Tongue midline without atrophy or fasciculation.

Motor: Normal for age and habitus. Full (5+) strength is present throughout, no drift upper or lower extremity. Using the Jamar device, pinch strength was measured on three (3) occasions as (bilaterally, in kgs): 7-7-7. Using the Jamar device, grip strength was measure on three (3) occasions as (bilaterally, in kgs): 21-20-20. These measurements were repeated without significant change.

Sensory: No primary or cortical deficits. Sensation is intact to pin, light and deep touch, vibration, proprioception and stereognosis, including to [double simultaneous stimulation]. No areas of diminished, increased or altered sensation are appreciated.

DTRs: Normoreflexic (1-2+), fairly brisk and symmetric throughout. [Temporal parietal junction] is absent bilaterally. No abnormal reflexes or release signs, no reflex spread or clonus is noted. Finger flexor and Hoffman's are absent bilaterally. Toe sign is bilaterally flexor.

Coordination: Of limb and trunk well preserved to [finger-nose-finger, heel-knee-shin and rapidly alternating movement] examination. Movements are normal for age and habitus, without bradykinesia, ataxia, tremor, rigidity or involuntary movements. Romberg test is normal.

Gait and Station: Generally normal for age and habitus, although somewhat hesitant on the left (the site of her incompletely healed ankle fracture). Gait and station are symmetric, including preserved sagittal balance and normal pelvic incidence. Gait including heel, toe and tandem gait are preserved, the toe gait being slightly diminished to the left. Step is mildly diminished to the left as well. Hop is severely diminished to the left.

11. Dr. Dell concluded Van Lente was "physically incapable of her usual duties, due to her consistent migraines." He further concluded she was substantially incapacitated for the performance of her usual duties, and such incapacity was permanent.

#### REEVALUATION OF DISABLED STATUS

12. At CalPERS's request, Dr. Ansel, a board-certified neurologist, performed an IME of Ms. Van Lente on November 27, 2017. He prepared a report documenting his IME, and testified at hearing.

13. Dr. Ansel documented the following history of Ms. Van Lente's injury as reported by her in his report:

Ms. Vanlente [sic], a 49-year-old, right-handed female provides the following historical information in a clear and concise fashion.

She had been working for CSU for approximately 14 years. She has not worked for three years because "of my migraines".

As I note in the physical requirements, the two specific physical requirements include sitting constantly over six hours and neck bending constantly over six hours.

It is these physical demands that have prevented Ms. Vanlente [sic] to continue to work.

She acknowledges that while off work for three years, her headaches have become less frequent. As a result, it has been possible to avoid the precipitating factors which, as noted,

included the immobility, neck motion, stress, florescent lights, and she can have the ability to lie in a dark, quiet room and take her medication.

14. During physical examination, Ms. Van Lente reported she was suffering "a little one [headache]." At the conclusion of the examination, she reported no change in her headache stating, "I was already feeling bad before I started."

15. Ms. Van Lente's neurological examination was "unremarkable." "Her appearance, speech, affect, and behavior were normal," as was cranial nerve testing. Examination of her upper extremities, motor, reflexes, and sensation were all within acceptable limits.

16. Dr. Ansel's IME also included a review of Ms. Van Lente's medical records. He noted in his report "the imaging studies showed relatively non-specific changes in the cervical spine, an unremarkable brain scan, and I acknowledge, as noted, the multiple report[s] prepared by a variety of physicians, all of whom acknowledge the long history of her 'vascular/migraine' headaches." He further noted that all previous treating physicians found "normal neurologic examinations as is typically the case in patients with migraine headaches" when examining Ms. Van Lente, which he did as well.

17. Dr. Ansel provided the following diagnosis for Ms. Van Lente:

In summary, therefore, upon my review of the associated records, imaging studies, history, and my personal examination, I can state that Ms. [Van Lente] does have intractable vascular/migraine headaches.

18. Based on his IME of Ms. Van Lente, Dr. Ansel concluded "there are no objective findings from a neurologic standpoint that would preclude Ms. [Van Lente] from working in her usual and customary fashion." He further concluded "in the absence of objective findings, Ms. [Van Lente] can continue to work in her usual and customary fashion."

19. Dr. Ansel testified at hearing in a manner consistent with his report. Additionally, he explained that "migraine headache" is an acceptable medical diagnosis, and such headaches can be debilitating. He further explained that there are no physical findings upon examination to support a diagnosis of "migraine headache," and there are no imaging studies that can be used to confirm the diagnosis. Instead, imaging studies are used to "rule out" other causes of the headaches. Therefore, a diagnosis of migraine headaches is based "100 percent" on the patient's reports of the frequency, intensity, and duration of headaches.

20. In discussing how he reached Ms. Van Lente's diagnosis, Dr. Ansel explained she reported a 30-year history of migraine headaches, which was partially confirmed by her medical records. He further explained he found no evidence of any significant changes in

her migraine headaches during that 30-year history. He described Ms. Van Lente as "credible" and "transparent" when communicating with him and answering his questions.

21. Dr. Ansel's conclusion that Ms. Van Lente is not substantially incapacitated is based on the fact that his IME revealed no objective findings that there are any specific job duties she cannot perform due to migraine headaches. He further explained his conclusion is based on his review and understanding of the usual duties she performed as a System Analyst, which he characterized as mainly a "clerical position."

#### ADDITIONAL MEDICAL EVIDENCE

22. Dr. Thakur is a board-certified neurologist who has been treating Ms. Van Lente's migraine headaches since October 24, 2007. At hearing, respondent introduced two letters written by Dr. Thakur. In a March 21, 2018 letter, he confirmed that Ms. Van Lente "is currently suffering from migraines 6-9 times per month," and that she "experienced migraines daily while working" in the past. He opined that "having the patient work will only worsen her migraines." On August 21, 2018, Dr. Thakur confirmed "Mrs. Van Lente has refractory debilitating migraines that is exacerbated by stress or work and has failed numerous treatments with medications; treatments include Botox injections."

23. Todd J. Antovich, D.C., testified at hearing on behalf of Ms. Van Lente. He is a chiropractor who has been treating Ms. Van Lente's migraine headaches for approximately the last two and a half years.

24. Dr. Antovich opined that Ms. Van Lente's migraine headaches are "absolutely disabling from pretty much everything," including working. He explained that when she suffers a migraine headache, "it is pretty much shut down time." He further explained she could not possibly maintain the focus necessary for performing detailed analyses when suffering a migraine headache.

25. Dr. Antovich confirmed that there are no objective findings to support the conclusion one suffers from migraine headaches. He explained, however, there are objective signs that provide support for that conclusion, such as facial grimacing and other physical responses to pain.

#### *Discussion*

26. CalPERS has the burden of producing persuasive medical evidence that Ms. Van Lente is no longer substantially incapacitated for the performance of the usual job duties of her former position as a System Analyst with the California State University Chancellor's Office. The sole medical evidence CalPERS relied on in making its determination that she is no longer substantially incapacitated was Dr. Ansel's November 27, 2017 IME.

27. Dr. Ansel diagnosed respondent with "intractable vascular/migraine headaches." He explained in his written report and at hearing that "migraine headache" is an

accepted medical diagnosis, migraine headaches can be disabling, and Ms. Van Lente has a 30-year history of suffering migraine headaches. He also explained there are no objective findings on examination that support a diagnosis of "migraine headache." there are no imaging studies that can confirm the diagnosis, and the diagnosis is made based "100 percent" on the patient's self-reporting of the frequency, intensity, and duration of the headaches. Nonetheless, Dr. Ansel concluded Ms. Van Lente is not substantially incapacitated, because "there are no objective findings from a neurologic standpoint that would preclude [her] from working in her usual and customary fashion. But Dr. Ansel provided no explanation, in his report or at hearing, for the apparent disconnect between his diagnosis and discussion of migraine headaches, on the one hand, and his conclusion that Ms. Van Lente is no longer substantially incapacitated, on the other. Additionally, his conclusion that her former position was largely a "clerical position" is contrary to the persuasive evidence establishing otherwise.

28. In addition, Dr. Ansel did not criticize or explain why Dr. Dell's conclusion that Ms. Van Lente was substantially incapacitated was erroneous, and Dr. Ansel opined that the status of her migraine headaches likely has not changed significantly over the last 30 years. Dr. Ansel's opinion is contrary to Drs. Dell's, Antovich's, and Dr. Thakur's, who all diagnosed respondent with migraine headaches and found her substantially incapacitated.

## LEGAL CONCLUSIONS

### *Applicable Burden/Standard of Proof*

1. Complainant has the burden of proving by a preponderance of the evidence that Ms. Van Lente is no longer substantially incapacitated for the performance of the usual job duties of her former position as a System Analyst with respondent California State University Chancellor's Office and should therefore be reinstated to her former position. (*In the Matter of the Application for Reinstatement from Industrial Disability Retirement of Willie Starnes* (January 22, 2000, Precedential Decision 99-03) <<http://www.calpers.ca.gov/eip-docs/about/leg-reg-statutes/board-decisions/past/99-03-starnes.pdf>>.) This evidentiary standard requires CalPERS to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, CalPERS needs to prove it is more likely than not that Ms. Van Lente is no longer substantially incapacitated. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

### *Applicable Law*

2. Ms. Van Lente is a state miscellaneous member of CalPERS by virtue of her former employment as a System Analyst with respondent California State University Chancellor's Office. She was granted disability retirement effective August 19, 2013, based on a neurological (headaches) condition pursuant to Government Code section 21150, subdivision (a), which provides the following:

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.

3. "Disability" and "incapacity for performance of duty" are defined in Government Code section 20026, which provides:

"Disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended and uncertain duration, as determined by the board, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion.

(See *Mansperger v. Public Employees' Retirement System* (1970) 6 Cal.App.3d 873, 876 ["We hold that to be 'incapacitated for the performance of duty' within section 21022' means the *substantial* inability of the applicant to perform [her] usual duties.": *italics original*].)

4. When a member has been retired for disability prior to the minimum age at which she can voluntarily retire for service, CalPERS may require the member to undergo a medical examination to determine if she is still disabled.

The board, or in case of a local safety member, other than a school safety member, the governing body of the employer from whose employment the person was retired, may require any recipient of a disability retirement allowance under the minimum age for voluntary retirement for service applicable to members of his or her class to undergo medical examination, and upon his or her application for reinstatement, shall cause a medical examination to be made of the recipient who is at least six months less than the age of compulsory retirement for service applicable to members of the class or category in which it is proposed to employ him or her. The board, or in case of a local safety member, other than a school safety member, the governing body of the employer from whose employment the person was retired, shall also cause the examination to be made upon application for reinstatement to the position held at retirement or any position in the same class, of a person who was incapacitated for performance of duty in the position at the time of a prior reinstatement to another position. The examination shall be made by a physician or surgeon, appointed

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<sup>1</sup> Predecessor to Government Code section 20026.

by the board or the governing body of the employer, at the place of residence of the recipient or other place mutually agreed upon. Upon the basis of the examination, the board or the governing body shall determine whether he or she is still incapacitated, physically or mentally, for duty in the state agency, the university, or contracting agency, where he or she was employed and in the position held by him or her when retired for disability, or in a position in the same classification, and for the duties of the position with regard to which he or she has applied for reinstatement from retirement.

(Gov. Code, § 21192.)

5. The minimum age for service retirement for a state miscellaneous member of CalPERS is 50 years old. (Gov. Code, § 21060, subd. (a).) Ms. Van Lente had not yet reached age 50 when CalPERS notified her that her "disability retirement benefits are currently under review to determine if you continue to meet the qualifications to receive disability retirement benefits pursuant to Government Code section 21192" on July 19, 2017.

6. If the member is determined to no longer be substantially incapacitated for performing her usual duties, she shall be reinstated to her former position.

If the determination pursuant to Section 21192 is that the recipient is not so incapacitated for duty in the position held when retired for disability or in a position in the same classification or in the position with regard to which he or she has applied for reinstatement and his or her employer offers to reinstate that employee, his or her disability retirement allowance shall be canceled immediately, and he or she shall become a member of this system.

If the recipient was an employee of the state or of the university and is so determined to be not incapacitated for duty in the position held when retired for disability or in a position in the same class, he or she shall be reinstated, at his or her option, to that position. However, in that case, acceptance of any other position shall immediately terminate any right to reinstatement. A recipient who is found to continue to be incapacitated for duty in his or her former position and class, but not incapacitated for duty in another position for which he or she has applied for reinstatement and who accepts employment in the other position, shall upon subsequent discontinuance of incapacity for service in his or her former position or a position in the same class, as determined by the board under Section 21192, be reinstated at his or her option to that position.

If the recipient was an employee of a contracting agency other than a local safety member, with the exception of a school safety member, the board shall notify it that his or her disability has terminated and that he or she is eligible for reinstatement to duty. The fact that he or she was retired for disability does not prejudice any right to reinstatement to duty which he or she may claim.

(Gov. Code, § 21193.)

7. As discussed in Factual Findings 26 through 28, CalPERS failed to establish that, upon the basis of examination, Ms. Van Lente is no longer substantially incapacitated for the performance of the usual job duties of her former position as a System Analyst with respondent California State University Chancellor's Office and should be reinstated to her former position. Therefore, her appeal from CalPERS's determination to the contrary should be granted.

#### ORDER

Respondent Stacey L. Van Lente's appeal from CalPERS's determination that she is no longer substantially incapacitated for the performance of the usual duties of a System Analyst with the California State University Chancellor's Office and should be reinstated to her former position is GRANTED. The Accusation is therefore DISMISSED.

DATED: December 27, 2018

Overlaid by:

*Coren D. Wong*

PC01073575461

COREN D. WONG  
Administrative Law Judge  
Office of Administrative Hearings