ATTACHMENT C

RESPONDENT’S ARGUMENT
BEFORE THE
BOARD OF RETIREMENT FOR
SACRAMENTO COUNTY EMPLOYEE’S RETIREMENT SYSTEM

In the Matter of the Application for Disability Retirement of:

TINA M. MARTINEZ,
Respondent,

OAH Case No. 2017060078
RESPONDENT’S ARGUMENT IN SUPPORT OF ADOPTING THE PROPOSED DECISION

I. INTRODUCTION

Tina Martinez (“Respondent”) as submitted an application for disability retirement benefits from the Sacramento County Employees’ Retirement System (“SCERS”). In her application, Respondent claimed to be permanently incapacitated from performing her usual job duties due to her congenital deafness and cerebral palsy. The Application was heard by Administrative Law Judge, Marcie Larson (“ALJ Larson”) and was granted.

Respondent submits this response in support of the proposed decision. ALJ Larson correctly decided that Respondent has met the requirement to be deemed permanently incapacitated from performing her usual job duties. Respondent urges the Board to Administration (“Board”) adopt the Proposed Decision issued March 8, 2019 in its entirety.
II. ARGUMENT

A. Respondent Bears the Burden of Proving Her Eligibility

An applicant for disability retirement has the burden of proving, by a preponderance of the evidence, that he or she is eligible for benefits. (McCoy v. Bd. of Ret. (1986) 183 Cal.App.3d 1044, 1051, fn. 5; Weber v. Bd. of Ret. (1998) 62 Cal.App.4th 1440, 1451; Harmon v. Bd. of Ret. Of San Mateo County (1976) 62 Cal.App.3d 689, 691.) As the party asserting the affirmative in an administrative proceeding, the applicant bears both the initial burden of going forward and the burden of persuasion by a preponderance of the evidence. (McCoy, supra, 183 Cal.App.3d at 1051, fn. 5). As ALJ Larson correctly found, Respondent has met her burden.


To qualify for disability retirement, the Respondent must prove that, at the time she applied, she was “incapacitated physically or mentally for the performance of his or her duties…” (Gov. Code, § 21156, subd. (a)(1).) Evidence of the incapacity is based upon competent medical opinion. (Gov. Code, § 20026.)


Over the course of her employment with the California Department of Veterans Affairs (Department), Respondent’s job duties had been altered to accommodate her disabilities. At the time of the Application, with the informal accommodations in place, Respondent’s job duties were significantly different than the duties in the standard job description. Respondent submitted a “line-by-line analysis” of the job duties performed by
respondent at the time of application. This analysis was provided to Dr. Michael Bronshvag, M.D. who conducted the Independent Medical Evaluation ("IME"). As part of the IME, Dr. Bronshvag interviewed respondent with an interpreter who provided interpreter services throughout the examination. Dr. Brownshvag obtained a medical history and conducted a physical examination. He reviewed the Duty Statement and the physical requirements of the position and reviewed the medical records related to respondent's neurological conditions.

After reviewing all the documentation, including the line-by-line analysis, Dr. Bronshvag opined that if respondent had not been performing the duties set forth in the Duty Statement for the 25 years respondent had been on the job, but instead had been performing the duties described in the analysis, then respondent was substantially incapacitated from the performance of the duties set forth in the Duty Statement, as a result of her neurological conditions. This opinion was further supported by respondent's treating physician, Dr. Beltran, who opined that respondent is substantially incapacitated from the performance of her duties as set forth in the Duty Statement.

ALJ Larson correctly concluded that there was sufficient competent medical opinion to make the determination that respondent was substantially incapacitated from performing the duties of the position at the time the Application was filed.

III. CONCLUSION

Based on the foregoing, Respondent submits that the ALJ correctly determined that respondent was substantially incapacitated from the performance of the position as written in the Duty Statement. As such, Respondent urges the Board to adopt the Proposed Decision in its entirety.

Dated: 3/19/2019

[Signature]
Robert C. Bowman, Jr.
Attorney for TINA MARTINEZ

Respondent's Response In Support Of Adopting The Proposed Decision
PROOF OF SERVICE
TINA MARTINEZ v DEPARTMENT OF VETERAN’S AFFAIRS
REFERENCE NO. 2017-0306
OAH CASE NO 2017-60078

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed in the office of a member of the bar of this court at whose direction the service was made. My business address is 3230 Ramos Circle, Sacramento, CA 95827. On March 19, 2019, I served the following document(s):

1. RESPONDENT’S ARGUMENT IN SUPPORT OF ADOPTING THE PROPOSED DECISION

on the following person(s) by the method(s) indicated below:

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[X]BY Mail- I am familiar with this offices practice whereby each document placed in an envelope is sealed, the appropriate postage is placed thereon, and the sealed envelope is placed in the office receptacle for out going mail. Each day’s mail is collected and deposited in a U.S. Mailbox at or before the close of each business day.

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I declare under penalty of perjury under the laws of the United States and the State of California that the above is true and correct. Executed at Sacramento, California on March 19, 2019

Constance Rozier, Declarant

Proof of Service