

ATTACHMENT A

RESPONDENT'S PETITION FOR RECONSIDERATION

LAW OFFICES OF
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FAX COVER LETTER

TO: Matthew G. Jacobs, General Counsel

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CITY: Sacramento, California

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Total Number of Pages (including Cover Letter): 4

FROM: Andrew Cantrell for Attorney Danny Polhamus
CANTRELL * GREEN, A PROFESSIONAL CORPORATION

RE: Kimberly A. O'Donnell - Reference No. 2019-0818

Dear Mr. Jacobs,

Attached please find a copy of our Petition for Reconsideration we have submitted to Cheree Swedensky.

Thank you.

PROOF OF SERVICE BY FACSIMILE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the aforesaid county, State of California. I am over the age of 18 years and not a party to the within action. My business address is 444 W. Ocean Blvd., Suite 1750, Long Beach, CA 90802

I served the following documents to the fax number listed above:

Sincerely,

Signed: [Signature] Date: 08/14/20 Time: 11:30 A.M.

**IF YOU DID NOT RECEIVE ALL PAGES OR RECEIVED THIS FAX IN ERROR,
PLEASE NOTIFY US AS SOON AS POSSIBLE @ (562) 432-8421.**

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8 BOARD OF ADMINISTRATION
 9 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

10	IN THE MATTER OF THE APPLICATION FOR)	AGENCY CASE NO. 2019-0818
11	DISABILITY RETIREMENT OF:)	OAH NO. 2019100223
12	KIMBERLY A. O'DONNELL,)	
13	Respondent,)	
14	and)	PETITION FOR RECONSIDERATION
15)	
16	CITY OF VENTURA;)	
17	Respondent.)	
18)	

19

20 Respondent (Applicant) Kimberly O'Donnell, objected to and argued against the Proposed

21 Decision denying disability retirement benefits. Without discussion, CalPERS adopted the

22 Proposed Decision denying the Respondent, Applicant's, appeal. The Board, however, did modify

23 language in the Proposed Decision regarding the definition of "Disability." The definition of

24 disability per Government Code §20026 should read:

25 Disability and incapacity for performance of duty as a basis of retirement

26 means disability of permanent or extended duration, which is expected to last

at least 12 consecutive months... on the basis of competent medical opinion ...

27 ///

28 ///

1 THE ALJ DID NOT RELY UPON THE OPINION OF THE AGENCY IME

3 REPORTING FROM DR ZARRIN

4 The ALJ relies upon the opinion of Dr. Zarrin in concluding that O'Donnell is capable of
5 returning to her usual and customary job as a Dispatcher with City of Ventura. However, a couple
6 of statements from Dr. Zarrin need to be looked at more closely. Dr Zarrin states that Applicant
7 may return to her job, not now, but in the future. Note the doctor's language:

8 It is anticipated that with even further time and further mental health treatment
9 she should have a good prognosis and there is anticipated further improvement
10 in her emotional condition. As such it would be expected that she would be
able to handle and maintain her duties and responsibilities as a public safety
dispatcher.

11 (Proposed decision, pg. 12.)

12 This report from Dr Zarrin was issued years after O'Donnell stopped working. The report is
13 from 2019; O'Donnell last worked on September 30, 2017. As of Dr. Zarrin's reporting, Applicant
14 had been disabled, and continued to be disabled, from performing her job duties as a Dispatcher for
15 the City of Ventura. Dr. Zarrin's opinions reflect an estimation as to a future condition. They are
16 prospective and do not indicate a present capacity. The doctor is not saying that, at this time,
17 Applicant can perform her job duties. Dr. Zarrin states that at that point in the future she would
18 require a shorter work schedule and breaks throughout her shift. No evidence was presented to
19 show that the Applicant could be accommodated with such restrictions.

20 If the ALJ is relying upon the opinion from Dr. Zarrin, then the conclusion must be that the
21 Respondent (Applicant) is incapable of substantially performing her job duties.

22 Whether the condition is PTSD or an adjustment disorder is immaterial, even to the ALJ.
23 The issue is whether Applicant is incapable of substantially performing her job duties due to an
24 accepted psychiatric impairment. All the doctors, including Dr. Warrick, found Respondent to be
25 credible and sincere. The SIMS test requested by Dr. Warrick shows O'Donnell is not malingering
26 or exaggerating. Her symptoms are credible and Dr. Warrick accepted them as such. Therefore,
27 whether caused by the PTSD or Adjustment Disorder, they are real and inhibit her ability to
28 perform certain activities in specific.

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THE DEFINITION OF DISABILITY IS MET PER THE OPINION OF DR. ZARRIN

Given the modification of the Proposed Decision to include the proper definition of disability, the Applicant should be entitled to her disability retirement. Of particular note is the fact that disability is inappropriate if an individual is expected to be incapable of performing her job duties for at least a 12 consecutive month period of time. Note the chronology:

1. Respondent, O'Donnell, last worked on September 30, 2017.
2. The report from Dr. Zarrin was from 2019.
3. Dr. Zarrin believes that sometime in the future, applicant could return to work.
4. Therefore, she has been disabled for more than 12 consecutive months and is entitled to a disability retirement.

The proposed decision is improper and unfair. A decision adopting the proposed ALJ decision cannot, and would not, withstand court scrutiny.

CONCLUSION

The Respondent, Kimberly O'Donnell, is entitled to a Disability Retirement.

Date: August 14, 2020

CANTRELL • GREEN
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Danny Polhamus

DANNY POLHAMUS, (Signed Electronically)
Attorney for Kimberly O'Donnell