

ATTACHMENT C

RESPONDENT'S ARGUMENT

Robin M. Rothwell-Allison



August 26, 2021


SENT VIA EMAIL

Cheree Swedensky, Assistant to the Board
CalPERS Executive Office
P.O. Box 942701
Sacramento, CA 94229-2701

Subject: In the Matter of the Application for Industrial Disability of ROBIN M. ROTHWELL-ALLISON, Respondent, CalPERS Reference No. 2020-0715.

Dear Ms. Swedensky:

Attached please find my (Respondent Robin M. Rothwell-Allison) written argument for consideration by the Board of Administration at its September 15, 2021 meeting. My argument is being timely filed by August 26, 2021, pursuant to the July 12, 2021 correspondence from the CalPERS' Legal Office.

Should you have any questions please contact me at .

Sincerely,

A handwritten signature in blue ink that reads "Robin M. Rothwell-Allison".

Robin M. Rothwell-Allison

Attachment

RESPONDENT'S ARGUMENT

On July 12, 2021 CalPERS sent me, Respondent Robin M. Rothwell-Allison, correspondence along with the Proposed Decision of Administrative Law Judge Howard W. Cohen, which was rendered on July 08, 2021. The correspondence provided me with the opportunity to submit a six page written argument by August 26, 2021, which I have timely complied herewith.

I am requesting that CalPERS *not* adopt ALJ Cohen's Proposed Decision denying my application for industrial disability retirement. Despite his opinion, I am substantially disabled from performing the usual and customary duties of a Special Investigator at the California Department of Insurance (CDI) due to my condition of trigeminal neuralgia (TN) and work-related stress. ALJ Cohen's decision is also contradictory as he admits TN is a well-recognized disabling condition.

TN is a rare neurological condition sometimes described as the most excruciating pain known to humanity. It causes chronic and excruciating facial pain that feels like electrical shocks, and TN can be triggered by the wind, talking, chewing, laughing, touching the face, brushing the teeth, applying makeup, etc. The intensity of pain can be physically and mentally incapacitating. It is a documented disabling condition.

There is no known cure for TN, only medications to try to control the pain, and experimental therapies or surgical procedures, including a form of brain surgery called micro vascular decompression, all of which may or may not work and could make the condition worse.

It is also well established that the condition can be exacerbated by stress to which my long time treating neurologist, Dr. Mollie Johnston, stated in medical records submitted into evidence, as did Dr. Natalia Ratiner, a neurologist with over 55 years of experience, in her Independent Medical Examination of me, also submitted into evidence. The job of a Special Investigator is a law enforcement position and is known to be extremely stressful.

My treating physicians, doctors Mollie Johnston, Ramya Malchira and Barry Halote all provided overwhelming competent medical evidence, including Physician's Reports of Disability and Certification of Health Care Provider, evidencing that I was unable to perform my job duties due to chronic and disabling episodes of TN and work related stress exacerbating my condition and that I was taken off work as a result.

Although my TN episodes were intermittent when I was first diagnosed with the condition, the attacks became increasingly worse over time, which it is known to do, as the attacks typically intensify over time with shorter pain-free periods. As my TN became more debilitating and the attacks more frequent, I was increasingly prohibited from performing my job duties. Disabling TN episodes strike unexpectedly at any time, and can come in hundreds of volleys of excruciating pain, for one thing

making it extremely dangerous when driving as the attacks render me unable to move, speak, eat, or do anything other than to close my eyes and stay completely still.

The Essential Function Duty Statement for the Special Investigator states 40% of the job entails gathering evidence and conducting interviews; 30% investigative reports and case preparation (includes testifying in court); 15% preparing and serving subpoenas, preparing search warrants, arrest warrant affidavits and execution of warrants; 15% administrative (various duties including conducting outreach, acting as interim supervisor, providing training and guidance to other investigators).

The majority of the essential functions require talking and driving on a regular basis. A Special Investigator who is unable to speak and/or drive is undeniably substantially incapacitated from performance of duty. Both Dr. Halote and Dr. Malchira stated I was unable to drive and speak, as did my former CDI supervisor June Arago and Supervising Investigator Dorothy Torrescano, who testified as witnesses at the administrative hearing.

ALJ Cohen did not give weight to the extensive competent medical evidence of my treating physicians and the witness testimony of two CDI supervisors that I was unable to perform the majority of my duties and his proposed decision should not be adopted because it incorrectly evaluates my disabling medical condition of TN. He is unfamiliar with the condition and therefore is unable to render an informed decision and instead based it on the opinions of CalPERS' biased experts, doctors Khaled Anees and Lawrence Warick, who only saw me once for a few hours when I was not experiencing disabling attacks of TN. Doctors Warick and Anees never addressed the fact that TN is a known disabling impairment which limits an individual's ability to function on the job and their opinions based on one short examination should be given little to no weight.

In addition, ALJ Cohen did not take into consideration the side effects of the medication I am prescribed to mask the TN pain. I take high dosages of Gabapentin, Oxcarbazepine, and Baclofen on a daily basis. Using Gabapentin together with Oxcarbazepine increases side effects such as dizziness, drowsiness, confusion, blurry vision, and difficulty concentrating. It is advised that driving can be dangerous. I experience all of those side effects which also substantially incapacitated me from performing my job duties. The medications sometime stop working and then I have to be prescribed higher dosages or try a new regimen of different medications, as I testified to at the hearing.

ALJ Cohen only gave credibility to the opinions of CalPERS' biased experts, doctors Anees and Warick, for which there is simply no support for their conclusions that I was not substantially incapacitated from performing my duties as a Special Investigator. Just because their one-time short examinations of me were unremarkable on the days of their examinations does not negate the fact and medical evidence of my long time treating physicians that I was substantially incapacitated by TN and work-related stress, and as a result was unable to perform my job duties. Neither Dr. Anees nor Dr. Warick seemed to be familiar with TN and did not take into consideration that TN can strike

unexpectedly, is debilitating, and is exacerbated by stress. As Doctors Anees and Warick each saw me only one time and are therefore unable to form competent medical opinions as to my condition and level of substantial incapacity and their opinions should be given little weight.

As such, their opinions that I am not incapacitated from performing my duties as a Special Investigator for CDI should not be relied upon as compared to the competent medical evidence of my treating physicians who have a long history with me, substantial knowledge of my conditions and knowledge of my inability to perform my duties as a Special Investigator. The objective findings of my treating physicians should bear the most weight in supporting the appeal of my industrial disability retirement application.

Although ALJ Cohen states in his decision that "The condition exists continually, but does not continually flare up" he has no personal knowledge of that and is not an expert on TN, so contrary to his belief, my TN did flare up continuously as evidenced by my continuous visits to my primary care physician, Dr. Malchira, and my neurologist, Dr. Mollie Johnston due to me suffering almost non-stop due to continuous flares of disabling TN. The flares and work-related stress was chronic, unrelenting and disabling rendering me unable to perform my job duties.

When attacks of debilitating TN pain strikes, which it can unexpectedly and randomly, I am unable to function in any capacity, especially in work duties that involve driving, talking, testifying in court, and meeting with the public on a regular basis. ALJ Cohen stated that I had been dealing the condition since 2014 I had been able to work as a Special Investigator for some years, eventually with certain accommodations. Despite the fact that I may have previously been able to function in a highly stressful job with TN that was in the very beginning when my TN was mild and only lasted a day or two then went into remission for a while. In 2018 when it became more frequent and more debilitating and no longer entered remission, I was unable to perform my job duties and was not given a reasonable accommodation. ALJ Cohen is incorrect when he said I was given "certain accommodations" as I was denied an accommodation, thus his analysis is incorrect.

ALJ Cohen also states in his proposed decision that "For industrial disability purposes, "disability" and "incapacity for performance of duty" mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board..., on the basis of competent medical opinion." (Gov. Code Section 20026.)

As part of my retirement application for industrial disability, my treating psychologist, Barry A. Halote, PH.D, provided a Physician's Report on Disability stating that I was substantially incapacitated from the performance of the usual duties of my position for my current employer for longer than 12 months. Dr. Halote stated that I was unable to perform my job duties due to work related stress and depression. He said that due to painful TN flare ups from stress I was unable to speak, drive or do any sort of duties during the episodes.

My primary care physician, Dr. Ramya Malchira, also provided a Physician's Report on Disability stating that I was substantially incapacitated from the performance of the

usual duties of my position for my current employer for longer than 12 months. Dr. Malchira said that stress at work made my TN worse causing flare ups of excruciating pain, and that I was unable to eat, drive or speak during the episodes and unable to concentrate at work.

ALJ Cohen also stated that "The July 2019 findings of Drs. Halote and Malchira are based primarily on respondent's self-reporting symptoms and her belief as to their cause." His opinion should be disregarded as there is no relevant decision which requires that the only way for an individual to prove disability is through objective evidence of disability. Almost all medical care is based on the subjective or self-reported complaints of patients other than those conditions that are visible through x-ray, CT scan or MRI, chemical tests through blood or urine analysis, broken bones etc. Doctors routinely treat patients based solely on their subjective complaints. Stress, depression, psychological disorders, and TN among other things are largely diagnosed and treated based on patients describing their symptoms to a physician.

ALJ Cohen cited (*Mansperger, supra. At pp.886-887.*) in his decision writing "It is well established that, when an applicant can perform his or her customary duties even though doing so may be difficult or painful, the employee is not incapacitated and does not qualify for a disability retirement." His opinion should not be given consideration as I was unable to perform my customary duties at all when I experienced debilitating attacks of TN as I was rendered unable to speak, drive, move, interview people, testify in court, prepare reports, execute search and arrest warrants, etc., thus, I was substantially incapacitated from doing my job. It is not something I can just work through that's mildly "difficult or painful" as it is completely debilitating and excruciating.

How would I be able to interview people, testify in court, talk on the phone, meet with people, or execute warrants if I was unable to speak or move and attempting to do so would be impossible or cause excruciating pain? And the possibility of experiencing a debilitating attack when driving could cause me to have an accident? His analogy in citing the Mansperger case does not apply when it comes to the condition of TN.

In addition, ALJ Cohen gave no weight or consideration to my denial of a reasonable accommodation for my medical condition of TN. I was denied an accommodation via memorandum from Sandra Jeffries (Jeffries), Health & Safety Analyst, Human Resources Division based on her allegation that CDI never received medical certification from my neurologist. However, when I asked Jeffries for proof of her requests for information from my doctors, she was unable to provide me with copies of the letters she claimed to have sent to them. My doctors informed me they never received any requests from my Jeffries or the CDI. I provided emails and documentation entered into evidence at the hearing when testifying to this, but ALJ Cohen instead gave credibility only to Jeffries denial letter of 03/19/2019 wherein she stated she never received the medical certification.

On 11/13/2020, I was awarded a settlement by the Workers' Compensation Appeals Board. ALJ Cohen gave no weight to this award although it arose out of the same mental and physical conditions that I based my disability retirement application on and the focus of the issues were identical.

TN is a well-documented disability as it interferes with job performance and daily life both mentally and physically. My TN was so debilitating that it incapacitated me to where I was substantially unable to perform my usual job duties for an extended duration of more than 12 months, as evidenced by my treating physicians' records, which is what should be given the most credibility in my application for industrial disability retirement.

Any Special Investigator or other person diagnosed with debilitating and chronic episodes of TN would be unable to perform their job duties and should be awarded disability retirement. Because the pain from TN can flare suddenly and without warning, people who suffer from TN do not know and cannot predict when their attacks and pain will strike. The unpredictability of TN is a contributing factor to its debilitating nature.

Disability benefits for TN under the Social Security program (SSDI) and/or pursuant to an employer-sponsored group plan (ERISA) are awarded when the flare-ups of pain are severe, frequent, impair work and cannot be adequately controlled, and should be the same for CalPERS' employees like myself.

For the reasons set forth herein, I respectfully request that the Board not adopt the ALJ Cohen's Proposed Decision and award me industrial disability retirement.

Sincerely,

A handwritten signature in blue ink that reads "Robin M Rothwell-Allison". The signature is written in a cursive, flowing style.

Robin M. Rothwell-Allison