

ATTACHMENT C

RESPONDENT(S) ARGUMENT(S)

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In the Matter of the Application for Industrial Disability Retirement of Robin M. Rothwell-Allison, Respondent, and Department of Insurance, Respondent. OAH No. 2020110125.

I, Respondent Robin M. Rothwell-Allison, am petitioning the California Public Employees' Retirement System (CalPERS) Board of Administration (Board) to reconsider my appeal and reverse its decision to adopt the Proposed Decision of Administrative law Judge Howard W. Cohen (ALJ Cohen) dated July 08, 2021.

I am again requesting that CalPERS *not* adopt ALJ Cohen's Proposed Decision denying my application for industrial disability retirement. Despite his opinion, and the decision of the Board, 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. TN is a well-recognized disabling condition and it is established that the condition can be exacerbated by stress.

I request that the Board thoroughly review my testimony, as well as the testimony of my former Supervising Investigator at the California Department of Insurance (CDI), Mr. June Arago, the testimony of retired Supervising Investigator Dorothy Torrescano, the competent medical evidence submitted of my treating physicians Dr. Ramya Malchira, Dr. Mollie Johnston, and Dr. Barry Halote, and informational evidence I provided on TN from the Facial Pain Association, the oldest and most foremost resource on TN and facial pain conditions. The evidence and testimony clearly shows that I am substantially disabled from performing the usual and customary duties of a Special Investigator for the CDI.

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 it can be triggered by stress, the wind, talking, chewing, laughing, touching the face, brushing the teeth, applying makeup, moving, among many other activities. The intensity of pain can be physically and mentally incapacitating.

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.

The job of a Special Investigator is a law enforcement position and is known to be extremely stressful due to the inherent nature of the job. It is well established that the condition of TN can be exacerbated by stress. Neither Ms. Tapia nor Mr. DesLauriers would assist me with my request for a reasonable accommodation, and in fact exacerbated my condition, by constantly threatening to write me up for various things and demanding that I work on too many cases at once all the while juggling criminal cases in San Diego and Santa Barbara, requiring me to work weekends, very long hours, and driving between the two cities on a regular basis and staying in hotels for days in order to work with District Attorneys' offices preparing for trial and testifying in court. All the while I was constantly being micromanaged and badgered by Ms. Tapia to do non-essential administrative tasks and other things with the threat of being

written up if I did not do them within her required time frame. Mr. DesLauriers did nothing to help me and instead piled on more work and demands.

The stress of the unnecessary increased work load, long hours, excessive travel, criminal hearings and court testimony, combined with the threats and unrealistic demands and pressure put on me by Mr. DesLauriers and Ms. Tapia, made my TN flare up uncontrollably to the point where I could no longer function and I had to be taken off of work in March 2019 by my primary care physician Dr. Malchira and psychologist Dr. Halote. I then filed a worker's compensation claim for the same reasons.

I was also taken off work by Dr. Malchira in December 2018 for work the same reasons of work related stress exacerbating my TN, also as a result of the actions of Mr. DesLauriers and Ms. Tapia. The medical leave documents were submitted into evidence at the hearing. As a result of not being given a reasonable accommodation and the work related stress, unrelenting pressure, and unrealistic demands of Mr. DesLauriers and Ms. Tapia, I felt forced to retire when I did not want to as they would not assist me with my condition and I felt I had no other choice but to leave a job I loved.

I was unable to testify at two preliminary hearings (one for the San Diego case and one for the Santa Barbara case) due to being unable to speak as a result of debilitating TN flares due to work related stress. I submitted an affidavit to the Santa Barbara Judge stating that, as well as informed the San Diego Deputy District attorney assigned to the case. The hearings had to be postponed as I was unable to speak.

I applied for a reasonable accommodation in November 2018, but was not provided with an answer until 03/19/2019, which is much longer than the 30 days wherein an answer is to be provided. 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. Ms. Jeffries was negligent in her duties to fully work with me, or with my doctors and my supervisors, in order to truly assess my need for an accommodation, and in fact she did nothing to assist me and could not even provide proof of requests for information to any of my doctors. That is unfair to me and Jeffries and my supervisors should have strived to assist me with a reasonable accommodation given my medical condition and complaints of stress, but they did nothing.

Neither Ms Tapia nor Mr. DesLauriers would meet with me to discuss my request or do anything to assist me with my stress and exacerbation of TN. They witnessed me having TN flares, being unable to speak, and being unable to perform my duties as a Special Investigator, but did nothing other than to add to my stress. I complained to them many times that I was stressed out and

needed help, but instead they kept pressuring me to do more work than I could handle and the threats to write me up for various unnecessary things continued, adding to the chronic stress and TN flares. I continued to get worse as a result. Mr. Arago and Ms. Torrescano knew of the work conditions in my office and the constant threatening actions against me caused by Ms. Tapia and Mr. DesLauriers, and they witnessed me being unable to perform my duties on many occasions and testified to that at the hearing.

My long time treating neurologist, Dr. Mollie Johnston, and Dr. Natalia Ratiner, a neurologist with over 55 years of experience, both stated in records submitted into evidence, that TN can be exacerbated by stress and that I experienced work related stress as a result of my job and supervisors. Dr. Ratiner stated in her report that I should not be in stressful situations and said, "It is absolutely necessary for this applicant not to be exposed to any kind of stress that could exacerbate her problem with facial pain even more." She also stated, "Within a reasonable degree of medical probability this applicant's trigeminal neuralgia problem was exacerbated by industrial stress." Dr. Ratiner said that my disability should be considered in part, "...due to exposure to extreme stress at work (especially starting in 2018 when the new supervisor came to the office.)" (Meaning Ms. Tapia as the new supervisor.)

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 in 2014, 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 in 2018 due to being exacerbated by work related stress, 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 renders 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 hearing. I urge the Board to consider all of this evidence.

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.

Just because doctors Anees' and Warick's 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 doctor 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 such, they are unable to form competent medical opinions as to my condition and level of substantial incapacity and their opinions should be given little weight. The objective findings of my treating physicians should bear the most weight in supporting the appeal of my industrial disability retirement application.

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. Higher dosages present more side effects.

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 and 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. As Dr. Ratiner noted in her report, "...the applicant suffered from left trigeminal neuralgia from the year of approximately 2014, and she noticed a significant exacerbation of the problem after being involved in great psychological stress at work." That was in 2018 when I was placed under the supervision of Ms. Tapia and was constantly badgered, threatened and micromanaged and received no assistance with my condition, or with my request for transfer from Ms. Tapia, or with a reasonable accommodation request.

ALJ Cohen is incorrect when he said I was given "certain accommodations" as I was denied an accommodation, thus his analysis is incorrect. Although ALJ Cohen states in his decision that

“The condition exists continually, but does not continually flare up” 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.

It is well documented that I was 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. Mr. Arago and Ms. Torrescano also testified to witnessing me having many TN attacks, being unable to perform my job duties and being chronically stressed out and due the stress put upon me by Mr. DesLauriers and Ms. Tapia.

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 excruciatingly painful. I request that the Board take the pain and debilitating aspects of TN into consideration regarding this.

I would like to reiterate to the Board that TN, especially exacerbated by work related stress, renders me physically and mentally unable to perform my job duties as I am unable to concentrate, interview people, testify in court, talk on the phone, meet with people, take statements, execute search or arrest warrants, drive, walk, talk, etc., when even 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, which I cannot risk for the safety of myself or others. To reiterate, ALJ Cohen's analogy in citing the Mansperger case does not apply when it comes to the condition of TN and I urge the Board to consider how TN comes into play with a Special Investigator position.

I also want the Board to consider that 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. Based on the same set of circumstances of work related stress exacerbating my TN, I should be also awarded medical disability by CalPERS in addition to the workers' compensation award.

TN is a well-documented disability as it interferes with job performance and daily life both mentally and physically. My TN is 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. Again, I urge the Board to consider the medical evidence I presented at the hearing which documents this, in addition to the testimony of witnesses.

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 and/or pursuant to an employer-sponsored group plan are awarded when the flare-ups of TN pain are severe, frequent, impair work and cannot be adequately controlled, and should be the same for CalPERS' employees like myself.

Unfortunately, there is not enough room in this six page Argument to document the entire timeline of all that transpired leading up to my decision to apply for industrial disability retirement based on exacerbation of TN due to work related stress. If the Board has never heard a case of disability related TN, I urge you to consider mine and not adopt ALJ Cohen's Proposed Decision and instead award me industrial disability retirement. If for some reason you do not find that TN is a well documented disability and that stress contributes to it, I would the Board to reinstate me to my former position with a reasonable accommodation under another supervisor than Ms. Tapia.

Robin M. Rothwell-Allison

Date: 10/28/2021

Robin M. Rothwell-Allison