

ATTACHMENT C

RESPONDENT'S ARGUMENT

FAX

Attachment C

DATE: 8/20/22

TO: Cheree Swedensky, Assistant to the Board

FROM: Cecilia LeBlanc

RE: Respondent's Argument

Please find this cover sheet and 3 pages.

Have sent the same via first class mail, and by certified mail. I hope the replications are not confusing. It has been a very long and difficult process, and I don't want to miss this very last piece of the puzzle.

Thank you,
Cecilia LeBlanc

Cheree,
 I have gotten an
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 If you receive this, please
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 at 530-513-0272
 Thank you
 Cecilia

August 20, 2021

OAH Case no. 2020070980

Cecilia LeBlanc

Agency Case No. 2020-0351

Respondent's Argument

In support of the Administrative Law Judge's decision to **GRANT** Cecilia LeBlanc's appeal of CalPERS's denial of her application for disability retirement.

To the Administrative Board of CalPERS,

I am self-represented, and will refer to myself as Cecilia LeBlanc, or Ms. LeBlanc.

During the hearing on May 17, 2021, Cecilia LeBlanc presented two medical doctors with relevant educations, and in current practices which address an orthopedic injury/condition, such as hers, as witnesses, and supporting documents in multiple exhibits. Ms. LeBlanc's witnesses and exhibits established with a preponderance of evidence that she is substantially incapacitated from performing the usual duties of a Registered Nurse at Mule Creek State Prison. For this reason, Cecilia LeBlanc's appeal of CalPERS's denial of her application for Industrial Disability retirement must be granted.

Dr. Prudencio Balagtas O.D. is a Physical Medicine and Rehabilitation Specialist. He described to the court that his specialty could be considered a non-surgical orthopedic specialist. Dr. Balagtas is in active practice and specializes in mainly musculoskeletal conditions of the spine as well as the peripheral joints. Worker's Comp referred Ms. LeBlanc to specialty care due to not improving with conservative measures.

In his testimony Dr. Balagtas stated that by the paperwork he has, he had no reason to suspect that Ms. LeBlanc was working at less than full capacity before her injury.

Dr. Balagtas had seen Ms. LeBlanc not less than 13 times from 4/24/21 to the date of the May 17, 2021, hearing. He received and reviewed the film of the MRI post injury, examined Ms. LeBlanc numerous times, did muscle strength evaluations, and addressed Ms. LeBlanc's symptoms. Dr. Balagtas was provided the Duty Statement for an RN, Correctional Facility, the CalPERS Physical Requirements of Position/Occupational Title, and the Mule Creek State Prison Job Description of and RN for his review and understanding of the position of an RN in a Correctional Facility. In his testimony, Dr. Balagtas addressed Ms. LeBlanc's inability to perform the usual duties of and RN in a Correctional facility, and other qualifying factors, at the time of his Permanent and Stationary Report, 8/30/19, and as a current provider of care. The whole of his testimony shows that Ms. LeBlanc is substantially unable to perform the usual and

customary duties of the position of RN at Mule Creek State Prison, including the essential functions of the position. He also relates her limitations are permanent.

Dr. Balagtas wrote a Permanent and Stationary Report 8/30/19. It was from that report that Mule Creek State Prison sent Ms. LeBlanc a letter saying her limitations could not be accommodated. She was told she could apply for nonmedical positions that would not require her to perform the essential duties of an RN. As Judge Rowan noted, the RN job description clearly states, "There are no non-essential duties".

Ms. LeBlanc was also seen by Dr. Joseph Sciafani, MD, a QME for Work Comp evaluations. He is in private practice, and also sees patients for medical evaluations. His primary medical specialty is physical medicine and rehabilitation, which as he says can be considered nonoperative orthopedics. He is also certified in rehabilitation and pain management.

Ms. LeBlanc was first evaluated by Dr. Sciafani January 11, 2020, 17 days before the CalPERS assigned IME, Dr. Henrichsen evaluated Ms. LeBlanc. Dr. Sciafani on 2/10/2020 wrote in his report of the 1/11/2020 evaluation: "Just prior to this work injury on October 4, 2018, Ms. LeBlanc was working full-time, full duty. If there are records available that would tend to indicate that there is some other cause for this disability, I would be glad to revisit this issue". None were reported to have been found.

Dr. Sciafani did 55.75 hours of medical records review, did physical exams and review of MRI and EMG reports. He was also supplied the RN Correctional Facility Duty Statement, the CalPERS Physical Requirements of Position/Title, and the Mule Creek State Prison Job Description for RN Correctional Facility. In his testimony he addressed Ms. LeBlanc's inability to perform the usual duties of an RN in a Correctional Facility. He also wrote in his 02/10/2020 written report of the evaluation of 1/11/2020, he believed Ms. LeBlanc had reached MMI, and described physical limitations that showed Ms. LeBlanc "is not able to return to her usual and customary job duties...". His evaluation and findings were quite similar to those of Dr. Balagtas. Dr. Sciafani also testified that Ms. LeBlanc is substantially incapacitated for the performance of the duties of RN at MCSP, and that her condition is permanent.


CalPERS assigned Dr. Robert Henrichsen, MD to see Ms. LeBlanc on 1/28/20. Dr. Henrichsen has extensive experience as an orthopedic surgeon and is Orthopedic Board certified. His Curriculum Vitae, provided in exhibit 8, shows he was a part of an Orthopedic medical group until 2011. In his testimony he stated he is in private practice, and states he currently is doing CalPERS medical evaluations.

Dr. Henrichsen is a trained surgeon, and I do not see that he is actively practicing surgery. Dr. Sciafani and Dr. Balagtas work with rehabilitation and are currently in active practice treating patients. Dr. Henrichsen reviewed records for 36 minutes after seeing Ms. LeBlanc on 1/28/20. Dr. Sciafani spent 55 hours reviewing records before the 1/11/20 evaluation. Dr. Henrichsen

examined Ms. LeBlanc one time. Dr. Sclafani examined Ms. LeBlanc 2 times, and Dr. Balagtas has done numerous physical exams, and has a far fuller view of Ms. LeBlanc's situation.

The testimony of the Dr. Joseph Sclafani, MD., QME and Dr. Prudencio Balagtas, O.D., shows that at the time of her application for Industrial Disability Retirement, Ms. LeBlanc was substantially incapacitated from performing the essential duties required of an RN at Mule Creek State Prison, and that her disability is permanent.

It would be unsafe for patients, other staff, and for Ms. LeBlanc to return to a position she cannot do. Ms. LeBlanc showed with a preponderance of evidence that she is substantially incapacitated from performing the usual duties of an RN at MCSP, and that the incapacity is permanent. For this reason, Cecilia LeBlanc's appeal of CalPERS's denial of her application for Industrial Disability Retirement must be **GRANTED**.


Cecilia LeBlanc

8/20/21