

ATTACHMENT C

RESPONDENT'S ARGUMENT

6/1/2023

SUBJECT: Respondent's Argument

CalPERS - Cover Letter Sheet

Samantha V. Jennings

2022-0567

Respondent's Argument-

May 31, 2023

To: Board of Administration California Public Employees' Retirement System State of California

I am responding to your letter dated April 11, 2023, and am thankful to have the opportunity to provide additional information, clarification, and correction of facts.

I do not feel my case included a clear and complete analysis of the issues I am currently dealing with on a daily basis, and I fear that interested parties have misunderstood the why and how of determining my diagnosis.

The letter received from a CalPERS Doctor (Dr. Anderson MD), who performed an independent medical evaluation (IME) performed only a brief observation with questions and his determination of this short visit stated I was not substantially incapacitated from performing my duties. As a Recorder/Election Technician for the County of Placer it was noted in the duties of the county recorder/elections Technician job description that my duties depend on extreme accuracy, complex record keeping and operating at a high speed. I have worked almost 19 years performing these duties without difficulties, but since my diagnosis I now find these duties difficult and at times impossible. This is all due to constant fatigue and brain fog, loss of train of thought, accompanied with dizziness, body aches and headaches. My time in court did not allow me to describe the difficulties experienced accomplishing required duties and explain the time required to do even the most simple of tasks.

I did explain the difficulties of walking, extreme weakness and tiredness. These are all foreign feelings to me, as I described how prior to Covid I was an exuberant runner/walker averaging 13 miles a week. I had no difficulty performing normal activities prior to the onset of Covid and fibromyalgia. I no longer drive California's highways or freeways, as I worry that I might be a threat to other drivers and rely on family for assistance in taking me to medical appointments. My vision is blurred and my equilibrium is affected, as is my concentration. I suffer high blood pressure, loss of sleep, depression and feelings of hopelessness with occasional panic attacks onset by what I am going through. Normal housekeeping tasks are extremely difficult, and require short burst of activity with long rest periods in between to complete.

I do not agree with the CalPERS medical consultant who performed the cursory medical exam and disregarded my family Doctors diagnosis. I am substantially incapacitated from performing normal duties and responsibilities at work, struggling to stay on task without errors.

My treating physician, Dr. Gary Guce, MD stated his diagnosis which described my pain and suffering, including a description of kidneys not functioning properly, brain fog and how it may effect interactions with the public and job performance. My eyesight has degraded and I have unexplained hair loss.

In reviewing my job description, Dr. Anderson noted that normal clerical duties should not be substantially impacted, and I disagree with his diagnosis due to the fact that my duties require exact and precise performance. Recording duties and Election duties require careful attention to detail, which I am now struggling to accomplish due to the after effects of Covid. I believe that Dr. Anderson may be biased in favor of CalPERS and disregarded my actual disabilities.

I have provided proof and a recent letter from Dr Guce that clearly states diagnosis of Covid and difficulties in day to day life. My incapacitation includes mental and physical challenges for performing my duties. My health provider stated clearly his diagnosis of Covid and referenced the multiple home covid tests which confirmed my battle with Covid. I would appreciate reconsideration using the evidence he has provided.

My physician instructed me to stop working when I was diagnosed with Covid as a Recorder Elections Technician due to my disabling condition. My physician noted and diagnosed my issues and I was instructed to stop working to avoid getting my coworkers sick and infected.

I was placed on leave October 3, 2020, and continuing (see Dr. Guce's Letter-encounter date 6/2/2022) when my doctor determined that I was unable to perform my former job duties, as required. After contracting Covid and trying to recover, I received Information provided by Human Resources about disability retirement, since performing my duties as Recorder Elections Technician were no longer possible.

I became aware that I could file an application for a disability retirement June 25, 2021, after being informed by Human Resources that I was eligible to pursue early retirement due to disability.

The specific disabling condition which prevented me from performing my duties continuously from November 20, 2020 to the present day is included in the Doctor Note of 6-2-22 (included in attachments) as Post-Acute Sequelae of COVID-19 and other specified symptoms. Specific conditions were as follows: Nonstop pain, inability to focus, hand tremors and numbness in hands, Brain fog, Inability to drive because of leg weakness, dizziness, extreme fatigue, heart palpitations, anxiety, depression, limited mobility, possible fibromyalgia, and Long Covid.

I was forced to advise my employer that I had to stop working because of a disabling condition. I notified Placer County on June 7, 2021, and I received a CalPERS retirement Package from Human Resources at that time. I participated in an interactive process with my employer where they provided me with information regarding disability retirement. I was also provided with an application for retirement. On December 28, 2021 Human Resources provided pertinent information to me to request early retirement.

I did not contact CalPERS for information regarding disability retirement before I stopped working. At the time, I was not aware that my condition would be long term. I did not leave work for any reason other than a disabling condition (i.e., termination, resignation, settlement agreement, alternative employment, etc.) I loved my job and would be celebrating 20 years with them now, if I was able to.

We are responding to your letter dated April 11, 2023, and are thankful to have the opportunity to provide additional information, clarification, and correction of facts.

Respondent does not drive, because she understands the potential of injuring herself or other drivers. Respondent's brain fog prevents her from being a safe driver and employee.

While serving as a Recorder/Elections Technician for Placer County, one of the many responsibilities was the issuance of vital records. With brain fog and extreme fatigue, an error in the issuing of vital records could be disastrous as birth certificates allow one to obtain government sponsored identification (Social security card, Driver's license, Passport or State or Government benefits) Death certificates, allow one to potentially obtain a death benefit not entitled too, in addition to confidential real estate documents.

Errors made while assigned to the Election division could be catastrophic and severely damage the integrity of the Placer County Elections office, our State and Nation.

The duty statement which details the required abilities of a Recorder/Elections Technician specifically states (contained in Proposed decision of March 9, 2023), that the individual has to have the ability to sit for extended periods of time, which Respondent is unable to do. Respondent's condition is such that she experiences extreme fatigue and must lie down numerous times throughout the day for extended periods of time. Additionally, respondent was required to have the ability to intermittently twist to reach equipment surrounding desk, perform simple grasping and fine manipulation, use telephone and write or use keyboard to communicate through written means and lift light weight. With the diagnosis of Covid - Long haulers, Respondents limbs are in constant pain. Moving about and lifting weight is painful and exhausting. Extreme brain fog which makes it difficult to communicate effectively by phone and in written form further complicates computer input and retrieval of information.

Respondent was also required to perform general duties in assigned areas of responsibility including maintenance of records and preparation of reports, to identify and interpret technical and numerical information, have the ability to examine, verify and check records, documents, and data, to respond to requests from the public, type or enter data at a speed necessary for successful job performance. It is noted that one should be capable of performing routine mathematical calculations, operate office equipment, and understand and follow oral and written instructions. The need to communicate clearly and concisely both orally and in writing is also a must.

The complications of Long Haulers Covid and Fibromyalgia are such that brain fog, fatigue, constant body ache, tremors, dizziness, weakness, anxiety, stress, constant pain in legs and high blood pressure prevent respondent from performing duties required as a Recorder/Elections Technician. Respondent can no longer in good conscience take on the responsibility of potential errors in issuing vital records.

Respondent cannot sit for long periods of time because of constant pain. Walking from her desk to the Ladies room requires Respondent to have a rest period before assuming duties. Input errors are possible because of the inability to concentrate. All assigned duties of a Recorder/Election Technician require diligence, require one to gather and explain policy and procedure requirements for Placer County, these duties Respondent can no longer perform. Additionally, the physical requirements mandate that Respondent can lift to 25 pounds and operate hazardous machinery. It is impossible for Respondent to lift to 25 pounds, and the requirement that Respondent operate hazardous machinery could result in loss of limb or life.

Respondent has extreme difficulty comprehending written materials and carrying on a conversation, which are vital job requirements. It should be noted that this submission was prepared by notes of her physician, family and friends as it is impossible for Respondent.

CalPERS relied on the expert opinion of Dr. Scott Thomas Anderson, clinical professor in the Division of rheumatology, allergy and clinical Immunology, Department of medicine, at the University of Davis School of medicine. Dr. Anderson's report states that Respondent can bathe, dress and groom herself without assistance and that Respondent can pay her bills online and order groceries. The report goes on to mention that Respondent can perform housekeeping tasks, but becomes fatigued.

What the report failed to mention is that while grooming and ordering groceries online can be accomplished, these tasks require Respondent to be fully rested before attempting these tasks. Respondents' life has changed since the Covid 19 and Fibromyalgia diagnosis. Driving to work, shopping and socializing are things we take for granted, but when you suffer the effects of Covid 19 Long haulers and Fibromyalgia the ability to arrive to these tasks alone safely is an issue.

PLEASE ALSO NOTE: I had my first Doctor's appointment with Rose Chepkoech Chumo, M.D. Rheumatology, (Kaiser) on June 3rd, 2022. She has ordered a series of blood tests.

In a recent publication from National Library of Medicine published online, February 27, 2023: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9970139/> Speaks of the relationship between Covid 19 and Fibromyalgia. The Abstract specifically mentions the symptoms experienced by the respondent to be a direct result of Covid 19 such as, fatigue, chronic pain, respiratory distress, cognitive dysfunction, memory and concentration impairment, depression or anxiety, and sleep impairment and insomnia. It should also be noted that Fibromyalgia is classified as chronic primary pain, considered the third most frequent musculoskeletal condition, affecting 2–3% of the world population. The U.S. Department of Health and Human Services has determined that long Covid is a disability under the ADA, Section 504 and section 1557. These laws and their related rules define a person with a disability as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of such individual ("actual disability"); a person with a record of such an impairment ("record of"); or a person who is regarded as having such an impairment ("regarded as"). A person with long COVID has a disability if the person's condition or any of its symptoms is a "physical or mental" impairment that "substantially limits" one or more major life activities.

My long COVID symptoms includes physical and mental impairment. My physical impairment includes physiological disorders and conditions affecting one or more of my body systems, including, among others; the neurological, respiratory, cardiovascular, and circulatory systems.

Accordingly, long COVID is a physical or mental impairment under the ADA, Section 504, and Section 1557.12

Long COVID has substantially limited one or more major life activities. Some major life activities that I am unable or need assistance to do; includes caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, breathing, learning, reading, concentrating, thinking, writing, communicating, and interacting with others. The term "substantially limits" is construed broadly under the laws and should not demand extensive analysis. The impairment does not need to prevent or significantly restrict an individual from performing a major life activity, and the limitations do not need to be severe, permanent, or long-term. Whether an individual with long COVID is substantially limited in a major bodily function or other major life activity is determined without the benefit of any medication, treatment, or other measures used by the individual to lessen or compensate for symptoms. Even if the impairment comes and goes, it is considered a disability if it would substantially limit a major life activity when the impairment is active.

I am a person with long COVID who has symptoms of intestinal pain, vomiting, and nausea that have lingered for months. As a person with long COVID I have experienced memory lapses and "brain fog" and it has substantially limited my brain function, concentration, and thinking.

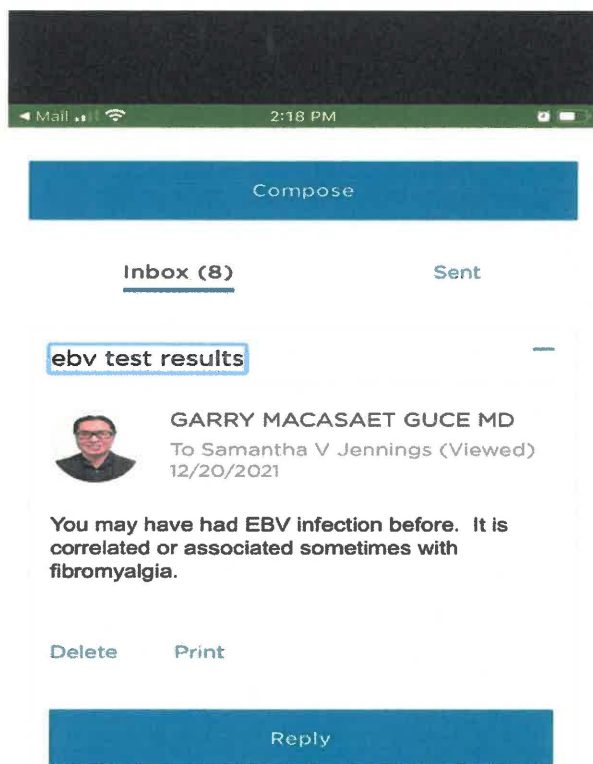
An individualized assessment has been accomplished to determine whether my long COVID condition or any of its symptoms substantially limited any major life activity.

I am curious as to what rights do people whose long COVID qualifies as a disability have under the ADA, Section 504, and Section 1557? People whose long COVID qualifies as a disability are entitled to the same protections from discrimination as any other person with a disability under the ADA, Section 504, and Section 1557.

Name and Contact information:

Garry M. Guce M.D. (Kaiser Permanente) (916) 784-4000
1001 Riverside Avenue, Roseville, CA. 95678-5134

Info regarding Covid: <https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/guidance-long-covid-disability/index.html>



Verizon LTE 9:29 AM

Menu Letters

Samantha Jennings

This form contains your diagnosis.

GUCE, GARRY MACASAET (M.D.)
1001 RIVERSIDE AVENUE
ROSEVILLE CA 95678-5134
916-784-4000
Patient Name: Jennings,Samantha V

Encounter Date: 6/2/2022

Please see below for this health care provider's directives and information relating to this encounter.

Work Status Report

Date onset of condition:
Next Appointment Date:

DIAGNOSIS: POST-ACUTE SEQUELAE OF COVID-19 W OTHER SPECIFIED SYMPTOMS

Off Work
This patient is placed off work from 6/1/2022 through 9/1/2022

This form has been electronically signed and authorized by GUCE, GARRY MACASAET (M.D.)

The Permanente Medical Group, Inc.

MEDICINE-STATION 4
1001 RIVERSIDE AVENUE
ROSEVILLE CA 95678-5134
Dept: 916-784-4050
Main: 916-784-4000

6/1/2023

To Whom It May Concern:

This is to inform you that Ms. Samantha Jennings (DOB: 2/7/1980) had developed Post acute sequelae of COVID-19 with other specified symptoms. She got COVID-19 disease early 2020 and had developed following symptoms:

- generalized body pains
- positive for EBV blood markers associated with Long COVID and Fibromyalgia
- Cognitive issues for which she is unable to drive, also with dizziness and fatigue
- low energy for which she is unable to walk even up stairs, used to be able to walk for 2 miles
- Depression and anxiety issues due to long covid and fibromyalgia
- "Brain fog". Memory/concentration problems, tremors, restless legs, palpitations
- unable to do simple tasks like unloading dishwasher - needs to rest after
- imbalance/discoordination
- gastritis issues, IBS (Irritable Bowel Syndrome)
- developed hypertension, now on medications
- hair loss, loss of taste and smell
- Joint pains
- Shortness of Breath
- Migraines

Website Feedback

-Migraines
-even simple tasks as dressing up causes pain, can barely get out of bed

It is in my medical opinion that she is disabled due to COVID-19 (Long COVID or Post Acute Sequelae of COVID-19).

If you have any questions or concerns, please don't hesitate to call us.

Sincerely,

(Electronic Signature)
Dr. Garry Guce
PCP - Internal Medicine
AFM Med 4



This letter was originally viewed by Samantha V Jennings on 6/1/2023 2:57 PM.

Back

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