

IN THE SUPREME COURT OF MISSISSIPPI

**PUBLIC EMPLOYEES' RETIREMENT
SYSTEM OF MISSISSIPPI**

APPELLANT

VERSUS

CAUSE NO. 2010-CC-00918

REBECCA WORLOW

APPELLEE

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record for the Appellee certifies that the following person(s) listed below have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

The Board of Trustees of the Public Employees' Retirement System

Honorable Katie Lester Trundt, Counsel for Appellant

Honorable Jim Hood, Attorney General

Honorable Winston Kidd, Hinds County Circuit Court Judge

Honorable Michelle Dean Easterling, Attorney for Appellee

Mrs. Rebecca Worlow, Appellee

RESPECTFULLY SUBMITTED, this the 6th day of January, 2011.

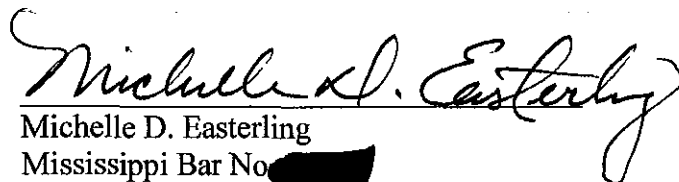

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STATEMENT REGARDING ORAL ARGUMENT

The Appellee agrees with the Appellant's counsel's assessment that oral argument is unnecessary as it will not aid or assist the decisional process of this Court.

STATEMENT OF THE ISSUE

1. Whether the Circuit Court of Hinds County, Mississippi, First Judicial District, correctly found that the Public Employees' Retirement System's denial of disability benefits was not supported by substantial evidence and was therefore arbitrary and capricious.

STATEMENT OF THE CASE

A. **Nature of the Case, the Course of Proceedings, and the Disposition in the Administrative Agency Below.**

This proceeding was commenced on July 11, 2005, when Rebecca Worlow, the Appellant herein, filed an application for disability benefits with the Public Employees' Retirement System of Mississippi. (Vol. II, R. 133). Mrs. Worlow was notified by letter dated January 9, 2006, that her application for disability benefits was denied by the Public Employees' Retirement System Medical Board due to insufficient objective evidence of a medical condition that prevented her from performing her duties as a teacher with the Aberdeen School District. (Vol. II, R. 184).

On March 1, 2006, Mrs. Worlow filed her Notice of Appeal of the Medical Review Board's decision with the Board of Trustees of the Public Employees' Retirement System. (Vol. II, R. 61-64). A hearing was conducted by telephone before the Board's Disability Appeals Committee on May 19, 2006. (Vol. II, R. 22). The members of the Disability Appeals Committee present were Dr. Joseph Blackston and Dr. Mark Meeks and the hearing officer was Ms. Sheila Jones. (Vol. II, R. 24).

Following this hearing, on May 19, 2006, the Disability Appeals Committee submitted its Proposed Statement of Facts, Conclusions of Law and Recommendation to the Board of Trustees wherein it recommended that Rebecca Worlow not be determined to be permanently disabled pursuant to Section 15-11-113 of the Mississippi Code, and that her application for benefits be denied. (Vol. II, R. 16-21A). Accordingly, the Board of Trustees issued its Order approving and adopting the findings and recommendation of the Disability Appeals Committee on June 27,

2006, denying disability benefits to Mrs. Worlow due to insufficient objective medical evidence to support her claim of permanent disability. (Vol. II, R. 15).

On July 25, 2006, Rebecca Worlow, by and through her attorney of record, perfected her appeal of the decision of the Board of Trustees of the Public Employees' Retirement System to the Hinds County Circuit Court, First Judicial District, by the filing of the Notice of Appeal and payment of costs in accordance with Rule 5.04 of the Uniform Circuit and County Court Rules. (Vol. I, R. 3). On December 14, 2009, the Circuit Court of Hinds County, First Judicial District, entered its Order and Opinion reversing the decision of the Board of Trustees of the Public Employees' Retirement System and granting benefits to Mrs. Worlow. (Vol. I, R. 5-9). On December 28, 2009, The Public Employees' Retirement System filed its Notice of Appeal to this Court. (Vol. I, R.10).

B. Statement of the Facts.

Rebecca Worlow, who at the time of her appeal of the denial of this claim was 58 years old, was a 26 year employee of the Aberdeen School District, where she taught fourth grade special education classes. (Vol. II, R. 28, 37). She was the lead teacher for her building. (Vol. II, R. 37). She had been the lead teacher for her building for five or six years prior to her resignation in May, 2006. (Vol. II, R. 53). Her supervisor was Mr. Chester Leigh, the school principal. (Vol. II, R. 53). Mrs. Worlow's job duties and responsibilities included general supervision of students and routine teaching responsibilities, including a lot of "foot work" and "duty" (Vol. II, R. 53, 140).

The PERS Form 6B "Employer's Certification of Job Requirements" indicated that Mrs. Worlow was required to sit and bend at the waist occasionally (anywhere from 6 to 33% of the day); that she was required to stand, climb stairs, lift less than 10 pounds, and use her hands for repetitive motion frequently (anywhere from 34 to 66% of the day); and that she was required to

write, supervise, walk and perform fine manipulation of objects continuously (anywhere from 67 to 100% of the day). (Vol. II, R. 139).

Over the years, Mrs. Worlow had problems with arthritic-like pain in various parts of her body, especially her feet. (Vol. II, R. 29). However, when she began experiencing significant problems in her jaw in December, 2004, she sought treatment from her dentist. (Vol. II, R. 29). It was at this time that she was advised that her pain stemmed from arthritis. (Vol. II, R. 29). She missed several days of work in December, 2004 due to what she thought was temporomandibular joint syndrome (TMJ). (Vol. II, R.39). By March, 2005, Mrs. Worlow's pain had increased to such a degree that she could hardly walk, causing her to miss days at work (Vol. II, R. 29). In the Spring of 2005, she sought treatment from her family doctor, Dr. Arthur Brown, of Aberdeen, who tested her for, and ultimately diagnosed her with, rheumatoid arthritis (Vol. II, R. 29).

Mrs. Worlow continued to attempt to work during the months of March, April and May, 2005, but frequently found herself unable to perform her job duties and responsibilities due to joint pain, swelling and stiffness in her hips, knees and feet. (Vol. II, R. 30, 32). Her joint pain and stiffness in her fingers and wrists affected her ability to drive: She could not turn her key in the ignition of her car, and her husband had to drive her to school on many days during the months of April and May, 2005. (Vol. II, R. 30). Once there, she required help in getting into the building. (Vol. II, R. 37). During the Spring of 2005, Mrs. Worlow experienced significant problems performing the routine physical responsibilities of her job: She relied upon her teacher's assistant and other fellow teachers to perform many of her duties, including lining the children up and taking them to the playground. (Vol. II, R. 29-30). In May, there were three or four occasions when once she had arrived at school, she had to ask her principal to call her

husband to come and pick her up due to her joint pain and overall inability to function. (Vol. II, R. 38).

Mrs. Worlow's joint pain also affected her abilities to care for her personal needs: pain and stiffness in her hands, fingers and wrists affected her ability to grip and grasp things such as a hairbrush and her toothbrush, books, pens and pencils. (Vol. II, R. 30-31). She could not perform routine personal care tasks such as bathing, dressing and grooming herself. (Vol. II, R.63). She stated,

I had days when I just could not get there at all. And then if I got there, I couldn't stay. And you know, I was able to stay some days, but once it hits bad, that was just about it. I just couldn't make it. I couldn't even get ready to go. I couldn't get myself ready, and even with help, I just couldn't get there. (Vol. II, R. 37-38).

She was physically unable to travel to Jackson to attend the awards banquet where she would be presented with the Teacher of the Year award for her District due to the pain and stiffness she was experiencing, which effectively and completely immobilized her. (Vol. II, R. 63). Mrs. Worlow submitted her resignation on May 23, 2006 citing health problems. (Vol. II, R. 28). At the hearing before the Disability Appeals Committee, Mrs. Worlow testified that she really enjoyed her teaching job and did not want to quit: "I was looking forward to making \$50,000 for the first time in my life, if I could have worked this year...." (Vol. II, R. 55).

As reflected in the PERS Form 6B, Mrs. Worlow's supervisor, Mr. Chester Leigh, stated that Mrs. Worlow was unable to perform the physical requirements of her job. (Vol. II, R. 140). Specifically, he stated that Mrs. Worlow was unable to perform general student supervision and that she could not discharge routine teacher duties. (Vol. II, R. 140). Mrs. Worlow was not offered any other job within the District (or with any other state entity). (Vol. II, R. 140).

Dr. Arthur Brown was Mrs. Worlow's treating physician who first diagnosed her with rheumatoid arthritis. (Vol. II, R. 33). The Progress Note dated April 29, 2005, reflects that Mrs.

Worlow complained of arthralgias in her hands and feet, especially in her lateral hand area. (Vol. II, R.156). Dr. Brown noted Mrs. Worlow's long-term problems with foot pain in her history. She also presented with complaints of low energy, trouble sleeping and possible depression. (Vol. II, R. 156). Dr. Brown diagnosed her as suffering from arthralgia and depression, and prescribed MOBIC 7.5 mg and Lexapro 15 mg. He ordered diagnostic tests, including an executive RA, ANA and a sedimentation rate. (Vol. II, R. 156). On May 3, 2005, Mrs. Worlow presented to Dr. Brown for follow up with continued complaints of joint stiffness and worsening arthritic symptoms over several months, especially in her wrist. (Vol. II, R. 155). At this time, Dr. Brown noted that the tests results indicated that Mrs. Worlow was hyperthyroid and that her RA was "significantly elevated at 88." (Vol. II, R.155). He diagnosed her with hypothyroidism and arthritis with a high RA titer, added a new prescription, Synthroid 0.112, and referred her to a rheumatologist, Dr. Kevin Asa, for an appointment on July 26, 2005, 12 weeks away. (Vol. II, R. 155). On May 20, 2005, Mrs. Worlow again presented to Dr. Brown, with reports of "rapidly progressing" arthritic symptoms and pain "intensifying significantly." (Vol. II, R. 155). On physical examination, Dr. Brown observed synovial thickening in her right wrist, elbow and ankle. (Vol. II, R. 155). He diagnosed her with arthritis, probably rheumatoid, and prescribed Naprosyn 500 mg b.i.d. and Methotrexate 2.5 mg, 3 times per week. (Vol. II, R. 155). Thereafter, Dr. Brown conducted routine CBCs and liver panels to monitor the effects of these medications. (Vol. II, R. 154-155). At a June 14, 2005, follow up, Mrs. Worlow reported continued "significant discomfort" with arthritis, and Dr. Brown noted on physical examination that she was tender in her wrist area particularly. (Vol. II, R. 154). She was a month away from seeing the rheumatologist. (Vol. II, R. 154). The remaining office notes reflect no change in her diagnosis of rheumatoid arthritis. (Vol. II, R. 153-154).

The PERS Form 7 completed by Dr. Brown reflects Mrs. Worlow's principle diagnoses to be Hypothyroidism and Rheumatoid Arthritis and his opinion that her Rheumatoid Arthritis condition is severe. (Vol. II, R. 152). Dr. Brown further indicates that her physical impairments include stiff joints and limited mobility which affect her ability to write and operate a computer. Further, he states that her inabilities to stand for very long and to write are permanent, that they limit her ability to function at her job, and that he attributes these impairments to her Rheumatoid Arthritis. (Vol. II, R. 152).

Upon referral from Dr. Brown, Mrs. Worlow saw Dr. Kevin Asa of Tupelo, Mississippi, on July 26, 2005 for an evaluation of rheumatoid arthritis. (Vol. II, R.160). Dr. Asa's Office note for the initial visit indicates that Mrs. Worlow presented with a detailed history of joint pain, stiffness and swelling, much worse in her right wrist, arm, shoulder, hip and ankle, over the past six months. (Vol. II, R. 160). Mrs. Worlow indicated that the pain was now in her hands. (Vol. II, R. 160). Mrs. Worlow reported that she had been taking three Methotrexate tablets per week since May. (Vol. II, R. 160). Dr. Asa's records indicate that at the time, Mrs. Worlow's prescribed medications included, in addition to the Methotrexate, Naproxen, Folic Acid, Calcium, and Synthroid. (Vol. II, R. 160). On physical examination, Dr. Asa's findings were as follows: "MCPs [metacarpophalangeal joints] slightly swollen right, decreased range of motion – shoulders, tender across MCPs, rheumatoid nodules on fingers, pain on motion – shoulders, pain on motion – wrists, ankles tender, MTP's [metatarsophalangeal joints] tender, knees have crepitus. . . ." (Vol. II, R. 162). Dr. Asa concluded that Mrs. Worlow suffered from Rheumatoid Arthritis and increased her Methotrexate to five tablets per week. (Vol. II, R. 164).

Dr. Asa then ordered a series of lab tests and x-rays of Mrs. Worlow's hands and feet. X-rays of Mrs. Worlow's feet taken on June 26, 2005 did indicate plantar spur formation resulting in the diagnosis of chronic plantar fasciitis, but they were otherwise normal. (Vol. II, R. 174).

However, the Rheumatoid Factor test result was positive and on the date of the test, her Rheumatoid Titer scored at 320 (Vol. II, R. 166-167). The July 26, 2005 titer was significantly higher¹ than the titer measured by Dr. Brown on May 3rd. (Vol. II, R. 155). The C-Reactive Protein test² reflected that Mrs. Worlow's level of protein was high, registering at 1.7 mg/dl, with a range of normal being 0 to 0.9. (Vol. II, R. 170). The results of the Cyclic Citrullinated Peptide AB, S test³ were also high, scoring 11.3 out of a reference range of less than or equal to 5.0 U/ml. (Vol. II, R. 168).

The PERS Form 7 completed by Dr. Asa on July 26, 2005 indicated that Mrs. Worlow suffered from Rheumatoid Arthritis of moderate severity and that her prognosis for recovery was guarded. (Vol. II, R. 159). Dr. Asa indicated that Mrs. Worlow's feet, hands, and shoulders were impaired due to active joint pain. (Vol. II, R. 159). Dr. Asa further indicated that Mrs. Worlow was unable to stand longer than 30 minutes and that she was also unable to use her hands and wrists for more than 30 minutes continuously. (Vol. II, R. 159).

On November 28, 2005, at the request of the PERS Medical Board, Mrs. Worlow saw Dr. Laura Gray of Tupelo for an independent medical evaluation. Dr. Gray did not, however, perform a functional capacity evaluation of Mrs. Worlow. (Vol. II, R. 147-149). After obtaining Mrs. Worlow's history and conducting a general review of systems (ROS), Dr. Gray assessed

¹ "A titer is a measure of how much the agglutination test blood sample can be diluted before RF can no longer be detected. A titer of 1 to 20 (1:20) means that RF can be detected when 1 part of blood sample is diluted by up to 20 parts of a salt solution (saline). A larger second number means there is more RF in the blood. Therefore, a titer of 1 to 80 indicates more RF in the blood than a titer of 1 to 20." Nissl, Jan, "A-Z Health Guide from WebMD: Medical Tests – Rheumatoid Factor," May 25, 2004, <http://www.webmd.com/hw/arthritis/hw42783.asp>

² "This blood test reflects the amount of C-Reactive protein produced by your liver when you have an inflammation somewhere in your body." "This test is most commonly done to monitor the activity of a range of inflammatory conditions ... [such as] Rheumatoid Arthritis." Nissl, Jan, "A-Z Health Guide from WebMD: Medical Tests – C-Reactive Protein (CRP)," May 25, 2004, http://www.webmd.com/hw/lab_tests/tu6309.asp

³ "Citrulline antibody is present in most patients with rheumatoid arthritis. It is used in the diagnosis of rheumatoid arthritis when evaluating patients with unexplained joint inflammation. . . Citrulline antibodies have been felt to represent the earlier stages of arthritis in this setting." Shiel, William C., Jr., MD, FACP, FACR "Citrulline Antibody," June 30, 2006, http://www.medicinenet.com/citrulline_antibody/article.htm.

Mrs. Worlow as suffering from Rheumatoid Arthritis, hyperthyroidism, chronic plantar fasciitis, depression, multi-joint pain and severe fatigue. (Vol. II, R. 148-149). In her report dated November 28, 2005, Dr. Gray indicates that she reviewed records, x-rays and labs from Dr. Asa from August 2005 to present, as well as those from and Dr. Brown.⁴ (Vol. II, R. 149). Dr. Gray states that “[w]hile her condition may be painful, her Rheumatologist does not suggest she is unable to continue her duty as a teacher.”⁵ (Vol. II, R. 149). Dr. Gray, the IME physician, confirmed the diagnosis of Rheumatoid Arthritis. Dr. Gray **did not** refute Mrs. Worlow’s assertion that she could not perform the physical requirements of her job. (Emphasis added).

Mrs. Worlow continued to follow up with Dr. Asa after her initial appointment with him in July, 2005. (Vol. II, R. 34). During this time, Dr. Asa gradually increased her dose of Methotrexate, and also prescribed Flexeril. (Vol. II, R. 34). At her January 17, 2006 office visit, Mrs. Worlow reported continued complaints of severe pain to her neck, shoulders, back, elbows, hips, knees, ankles, wrists and hands. (Vol. II, R. 80). She reported that her knees, wrists, ankles, and elbows were swelling, and that she suffered from joint stiffness. She reported that she continued to suffer from fatigue. (Vol. II, R. 80). At the time of this visit, Mrs. Worlow was taking nine tablets of Methotrexate per week without noticeable relief. (Vol. II, R. 81). Her diagnosis of Rheumatoid Arthritis, active, did not change. (Vol. II, R. 81). At this time, Dr. Asa lowered her dose of Methotrexate to six tablets per week and added an injectible medication called Humira⁶ (Vol. II, R. 81, 83).

⁴ Other than an August, 2005 reference point, there is no indication in Dr. Gray’s report, or in any aspect of this record, which specific records she reviewed, or who sent them to her for review.

⁵ Nor is there any indication that Dr. Gray reviewed the two PERS Form 7s completed by both of Mrs. Worlow’s treating physicians, Dr. Asa and Dr. Brown, which were already on file with PERS at the time of Dr. Gray’s November 28, 2005 evaluation, both PERS Form 7s having been filed with PERS August 3, 2005 and September 26, 2005, respectively. (Vol. II, R. 159, 152).

⁶ “Humira is a biologic disease modifying antirheumatic drug (DMARD), approved by the Food and Drug Administration (FDA) for treatment of moderate to severe RA in adults who have had a poor response to other RA

Shortly after taking her first dose of Humira on January 26, 2006, Mrs. Worlow suffered what she believed was a severe reaction to the drug almost immediately after taking it. (Vol. II, R. 34-36). After about a week of chills, fever, and vomiting, she went to her local emergency room on four separate occasions in February, 2006 with complaints of total joint pain, fever and chills, elevated blood pressure and heart rate, and vomiting. (Vol. II, R. 35). Specifically, she went to the emergency room at the Pioneer Community Hospital on February 1, February 9, February 19 and February 21, 2006. (Vol. II, R. 74-75; 84; 87-90; 95-99; 110-116). Copies of medical records and receipts from these four trips to the emergency room at her local hospital were submitted to PERS prior to Mrs. Worlow's hearing on May 19, 2006. (Vol. II, R. 84-121).

When she was experiencing what she perceived to be a reaction to the Humira medication prescribed by Dr. Asa, Mrs. Worlow attempted to reach Dr. Asa but was not successful. (Vol. II, R. 43-44). On February 10, 2006, she subsequently followed up with Dr. Kevin Hayes, a general practitioner, who had treated her during one of her emergency room visits. (Vol. II, R. 44). Dr. Hayes referred Mrs. Worlow to Dr. Sheila Atiq, a Rheumatologist from Columbus. (Vol. II, R. 43, 127).

At this same visit, Dr. Hayes assessed Mrs. Worlow's physical capabilities on a Medical Source Statement. (Vol. II, R. 70). Dr. Hayes indicated that Mrs. Worlow could occasionally lift less than ten pounds, and frequently lift less than five pounds. (Vol. II, R. 70-72). Dr. Hayes further indicated that Mrs. Worlow's ability to stand, sit and walk are affected by her condition. He stated that she could stand and/or walk only two to three hours a day, and less than one hour without interruption. (Vol. II, R. 71). Dr. Hayes stated that Mrs. Worlow could sit for a total of three to four hours per day, but that she could only sit less than two hours without interruption.

medicines, such as Methotrexate." From www.humira.com/hu/hustore/cgi-bin/ProdSubEV_Cat_205033_NavRoot_205033_NavID_301.htm

(Vol. II, R. 71). Dr. Hayes also stated that Mrs. Worlow's ability to reach, handle, feel, push and pull were affected, and that she was restricted from heights, temperature extremes, chemicals, humidity and vibrations. (Vol. II, R. 72). Dr. Hayes attributed these limitations to Mrs. Worlow's diagnosis of Rheumatoid Arthritis and possible Multiple Sclerosis, and stated unequivocally that Mrs. Worlow was unable to perform her job duties. (Vol. II, R. 72). Further, Dr. Hayes stated that his opinions were based on objective findings and not primarily on subjective complaints. (Vol. II, R.70-72). A copy of Dr. Hayes' Medical Source Statement was submitted to PERS prior to the May 19, 2006 hearing. (Vol. II, R. 65).

Mrs. Worlow's first visit with Dr. Sheila Atiq, the Rheumatologist, took place on February 14, 2006. (Vol. II, R. 68-69). On physical examination, Dr. Atiq stated, "TM joints have significant crepitus. Neck has full but tender range of motion. Bilateral shoulders have full but tender range of motion." (Vol. II, R. 69). Dr. Atiq further commented on physical examination that "[b]ilateral knees have significant crepitus with mild synovitis. Bilateral wrists, MCPs, PIPs, and DIPs [Distal Interphalangeal joints] have no active synovitis, however, tenderness on palpation." (Vol. II, R. 69). The February 14, 2006 record from Dr. Atiq was submitted to PERS prior to the May 19, 2006 hearing before the Disability Appeals Committee. (Vol. II, R. 65, 68).

At the hearing, Mrs. Worlow testified that she last saw her Rheumatologist, Dr. Sheila Atiq, on April 20, 2006, less than one month prior to the hearing before the Disability Appeals Committee. (Vol. II, R. 47). She stated that Dr. Atiq performed lab work at that time but that she did not have the results at the time of the hearing. (Vol. II, R. 42). Mrs. Worlow further testified that she continues to take seven and a half tabs of Methotrexate per week and pain medications, such as Lortab. (Vol. II, R. 50, 52). She testified that she continues to be treated by Dr. Hayes for depression, and that she now takes Klonopin in place of Lexapro. (Vol. II, R. 51-52). At the

day of the hearing, she testified that, on these medications, generally, she is now able to care for her personal needs like brushing her hair and her teeth, and bathing, but that she sometimes requires assistance. (Vol. II, R. 40). She testified that she still cannot shop for groceries, perform housework, or drive. (Vol. II, R. 40). She testified that her use of her hands has improved somewhat and that she can walk better, but she continues to have joint pain and fatigue. (Vol. II, R. 41).

SUMMARY OF THE ARGUMENT

The Circuit Court of Hinds County, Mississippi, First Judicial District, correctly found that there was insufficient evidence in the record of this case to support PERS' denial of disability benefits to the Appellant, Rebecca Worlow. Upon review of the record in this cause, including Mrs. Worlow's medical records, the PERS Form 7s (Statements of Examining Physicians), the Statement of the Employer, and the sworn testimony given by Mrs. Worlow from the transcript from the hearing before the Disability Appeals Committee, the Circuit Court found that PERS presented **no reasonable evidence that Mrs. Worlow was not disabled** (emphasis added). (Vol. I, R. 9). Considering the lack of evidence presented by PERS, and faced with the overwhelming abundance of credible, objective and reliable medical evidence presented by Mrs. Worlow to the Public Employees' Retirement System to support her claim of permanent disability pursuant to Section 25-11-113 of the Mississippi Code, 1972, the Circuit Court correctly and justifiably reversed the decision of PERS and granted Mrs. Worlow disability retirement benefits.

Like the reviewing Court below, this Court must examine the record before it: The Disability Appeals Committee's Proposed Findings of Fact and Conclusions of Law, which were ultimately adopted by the PERS' Board of Trustees, provides us with its reasoning – or lack thereof – for its denial of benefits. A review of the record reveals that these “reasons” do not

equate to substantial evidence, and thus, PERS' decision to deny benefits was without merit. According to the Proposed Findings of Fact and Conclusions of Law, PERS denied Mrs. Worlow's application for disability benefits for three purported reasons: First, PERS' DAC stated that Mrs. Worlow's "diagnosis of arthritis is not definite according to the record because the lab work that Dr. Asa had run returned normal." (Vol. II, R. 20). Second, the DAC reasoned that her x-ray reports were normal and did not reflect "evidence of the disease that would result in the pain of which Ms. Worlow complained." (Vol. II, R. 20-21). The purported third and final reason the DAC cites in its Findings was that Mrs. Worlow's "employer was happy with her because she was offered a contract for the following year." (Vol. II, R.21).

As the Circuit Court readily recognized, the record in this case contains an abundance of credible, objective and reliable medical evidence that substantiated Mrs. Worlow's claim of a disabling disease, Rheumatoid Arthritis: **Every one of the five physicians who has evaluated Mrs. Worlow, including PERS' own selected physician, Dr. Laura Gray, concluded that Mrs. Worlow suffers from Rheumatoid Arthritis.** Second, all of the labs tests designed to determine the presence of rheumatoid arthritis in a patient administered by Mrs. Worlow's treating physicians, Dr. Brown and Dr. Asa, resulted in a definitive diagnosis of Rheumatoid Arthritis. That x-rays of bones taken within a few months of the onset of active rheumatoid arthritis do not reflect calcifications or other deposits is insignificant: evidence of such damage may take years before it shows up on x-rays. One "normal" x-ray of hands and feet, compared with positive results of multiple blood pathogen tests, is not a "substantial" basis to support a denial for disability benefits under applicable law. Third, Mrs. Worlow's disabling physical condition was objectively evidenced as reported in the records of her treating physicians who noted their findings on physical examination. These findings substantiate the increase in complaints of pain from Mrs. Worlow due to the progressive nature of the painful RA flare.

Fourth, Mrs. Worlow has been prescribed high doses of medications which are designed to treat Rheumatoid Arthritis and severe joint inflammation, including Methotrexate, Humira, and Naprosyn, as well as pain medications such as Lortab. To suggest that there has been no definitive diagnosis of Rheumatoid Arthritis in this case is absurd, arbitrary and capricious.

Mrs. Worlow's complaints of progressive joint pain, swelling and stiffness have been consistent in all of the medical histories she has given to all of her treating physicians, including the PERS physician. Her testimony at the telephonic hearing before the PERS' Disability Appeals Committee was also consistent with these histories. Mrs. Worlow's complaints of pain, though subjective, are consistent, credible and worthy of significant weight.

Finally, the Record in this case clearly substantiates Mrs. Worlow's inability to perform the physical requirements of her job. The sworn testimony of Mrs. Worlow, the statement of her supervisor, Mr. Chester Leigh found in the PERS Form 6B Employer's Certification of Job Requirements and the PERS Form 7 Statements of Examining Physicians, Drs. Brown, Asa, and Hayes, all indicate that Mrs. Worlow cannot perform her job as a teacher of 4th grade special education due to her severe Rheumatoid Arthritis. The Record in this case -- including the report of PERS' own physician Dr. Laura Gray -- reflects no dispute that Mrs. Worlow is unable to perform the physical requirements of her job as lead teacher for 4th grade special education classes at Aberdeen School District.

The Circuit Court examined PERS' denial of benefits in the context of the complete record in this case, and rightly found that PERS' decision to deny benefits was not supported by substantial evidence -- let alone any reasonable evidence -- and was an arbitrary and capricious act warranting reversal. The Order and Opinion of the Circuit Court of Hinds County, First Judicial District, was correct and should be affirmed.

ARGUMENT

Standard of Review.

On appeal, this Court employs the same standard of review of an administrative agency's decision as the Circuit Court below. *Public Employees' Retirement System v. Dozier*, 995 So.2d 136, 138 ¶ 7 (Miss. Ct. App. 2008). The Circuit Court's review of the administrative agency's decision is limited to determining if the decision was supported by substantial evidence, was arbitrary and capricious, was beyond the power of the administrative agency to make, or violated a statutory or constitutional right of the charging party. *Mississippi State Bd. of Examiners v. Anderson*, 757 So.2d 1079, 1084 ¶ 14 (Miss.2000) (citing *Mississippi State Bd. of Nursing v. Wilson*, 624 So.2d 485, 489 (Miss.1993)). This limited standard of review is in accordance with Rule 5.03 of the Uniform Circuit and County Court Rules, which states that on appeal to the Circuit Court, the Circuit Court must determine whether any one or more of these four grounds exists before overturning the decision of the Public Employees' Retirement System. See, *Davis v. Public Employees' Retirement System*, 750 So.2d 1225, 1230 ¶¶ 12, 13. (Miss.1999).

Other important principles of law that apply to an appeal of a decision of the PERS administrative agency can be summarized succinctly by stating that there is a rebuttable presumption in favor of a decision of the Public Employees' Retirement System. Also, the reviewing court cannot substitute its judgment for that of the administrative agency's judgment and may not re-weigh the facts presented. See, *Public Employees' Retirement System v. Dishmon*, 797 So.2d 888, 891, ¶ 9 (Miss.2001); *Davis v. Public Employees' Retirement System*, 750 So.2d at 1230, ¶ 12; *Brinston v. Public Employees' Retirement Sys.*, 706 So.2d 258, 259, ¶ 6

(Miss. App. 1998); *Sprouse v. Mississippi Employment Sec. Comm'n*, 639 So.2d 901 (Miss.1994).

However, when reviewing the proceedings of the lower authority to determine whether its decision was based upon substantial evidence, the Mississippi Supreme Court has stated that,

[T]he Circuit Court must look at the **full record** before it. . . . While the circuit court performs limited appellate review, it is not relegated to wearing blinders. The court must determine if the evidence is **legally adequate** to support the lower body's factual findings. *Mississippi State Bd. of Examiners v. Anderson*, 757 So.2d at 1084, ¶ 15 (emphasis added).

As this Court has reminded us, “[t]he supreme court has previously held that PERS’s opinion is not conclusive, and **PERS cannot choose to ignore uncontroverted evidence** provided by the treating physicians.” *Public Employees’ Retirement System v. Dozier*, 995 So.2d at 141-42 ¶ 19 (emphasis added).

“Substantial evidence means something more than a ‘mere scintilla’ or suspicion.” *Public Employees’ Retirement System v. Marquez*, 774 So.2d 421, 425 ¶ 13 (Miss. 2000) (citing *Mississippi Real Estate Comm’n v. Anding*, 732 So.2d 192, 196, ¶ 13 (Miss. 1999)). Substantial evidence has further been defined by the Supreme Court of Mississippi as that which “reasonable minds might accept as adequate to support a conclusion.” *Id.* (citing *Delta CMI v. Speck*, 586 So.2d 768 (Miss. 1991)).

The Mississippi Supreme Court has also stated that administrative agencies are required to “say at least minimally why they do what they do so someone can see whether it be arbitrary and capricious,” and “whether substantial evidence undergirds its actions.” *Public Employees’ Retirement System v. Bishop*, 942 So.2d 259, 265 ¶ 26 (citing *McGowan v. Miss. State Oil & Gas Bd.*, 604 So.2d 312, 322 (Miss.1992) and *Public Employees’ Retirement System v. Marquez*, 774 So.2d 421, 429 ¶ 30 (Miss.2000)).

Where a review of the record and proceedings of the lower authority indicates a decision unsupported by adequate credible evidence, such a decision should be regarded as “contrary to the law and subject to modification or reversal.” *Davis v. Public Employees’ Retirement System*, 750 So.2d at 1230, ¶ 13 (citing *Chandler v. City of Jackson Civil Service Comm’n*, 687 So.2d 142, 144 (Miss.1990)).

The terms “arbitrary” and “capricious” have been defined by the Mississippi Supreme Court as follows: “An act is arbitrary when it is not done according to reason or judgment, but depending on the will alone. ‘Capricious’ was defined as any act done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principals.” *Burks v. Amite County School District*, 708 So.2d 1366, 1370 ¶ 14 (Miss.1998) (citing *McGowan v. Mississippi State Oil & Gas Bd.*, 604 So.2d 312, 322 (Miss.1992)). “An agency decision that is not based on substantial evidence is necessarily arbitrary and capricious.” *Public Employees’ Retirement System v. Kellum*, 878 So.2d 1044, 1047 ¶ 7 (Miss.Ct.App.2004) (citing *Marquez*, 774 So.2d at 430, ¶ 35)).

THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI, FIRST JUDICIAL DISTRICT, CORRECTLY DETERMINED THAT THE FINDING OF THE PUBLIC EMPLOYEES’ RETIREMENT SYSTEM BOARD OF TRUSTEES THAT REBECCA WORLOW WAS NOT PERMANENTLY DISABLED AS DEFINED BY SECTION 25-11-113 OF THE MISSISSIPPI CODE, 1972, WAS IN ERROR, WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, AND WAS THEREFORE, ARBITRARY AND CAPRICIOUS.

Section 25-11-113 of the Mississippi Code, 1972 (as amended and annotated) provides in relevant part as follows:

DISABILITY RETIREMENT.

Upon the application of a member or his employer, any active member in state service who has at least four (4) years of membership service credit may be retired by the board of trustees on the first month following the date of filing such application on a disability retirement allowance, but in no event shall the disability retirement allowance commence before termination of state service, provided that the medical board, after a medical examination, shall certify that the

member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that the member should be retired; however the board of trustees may accept a disability medical determination from the Social Security Administration in lieu of a certification from the medical board. For the purposes of disability determination, the medical board shall apply the following definition of disability: the inability to perform the usual duties of employment, or the incapacity to perform such lesser duties, if any, as the employer, in its discretion, may assign without material reduction in compensation, . . . M.C.A. §25-11-113 (a).

In its Proposed Statement of Facts, Conclusions of Law and Recommendations, the PERS' Disability Appeals Committee states that "[t]he statute requires that any disability must be supported by the medical evidence and we do not have persuasive evidence that Ms. Worlow is permanently and totally disabled." As set forth in the Proposed Statement of Facts, Conclusions of Law and Recommendations adopted by the PERS' Board of Trustees on June 27, 2006, the Committee denied Mrs. Worlow's application for disability benefits for three purported reasons: First, the Committee stated that Mrs. Worlow's "diagnosis of arthritis is not definite according to the record because the lab work that Dr. Asa had run returned normal." (Vol. II, R. 20). Second, the Committee reasoned that her x-ray reports were normal and did not reflect "evidence of the disease that would result in the pain of which Ms. Worlow complained." (Vol. II, R. 20-21). The purported third and final reason that the Committee cites in its Findings is that Mrs. Worlow's "employer was happy with her because she was offered a contract for the following year." (Vol. II, R. 21).

As demonstrated by the record citations and arguments below, the above-cited reasons and the ultimate conclusion reached by PERS to deny Mrs. Worlow's benefits are insufficient, illegitimate and collectively do not amount to even a "scintilla." Accordingly, because the decision is not supported by substantial evidence, the decision is arbitrary and capricious and must be reversed.

PERS, in effect, says that it does not have persuasive medical evidence that Mrs. Worlow suffers from disabling Rheumatoid Arthritis despite the fact that **no less than five licensed physicians, including a physician selected by PERS, have diagnosed Mrs. Worlow as suffering from Rheumatoid Arthritis.** The Mississippi Supreme Court and the Court of Appeals have held that medical diagnoses by licensed physicians constitute objective, not subjective, evidence of disability. *Stevison v. Public Employees' Retirement System*, 966 So.2d 874, 880 ¶ 22 (Miss. Ct. App. 2007) (citing *Marquez*, 774 So.2d at 430 ¶ 22). Mrs. Worlow's treating physicians, Drs. Brown, Asa, Hayes, and Atiq all diagnosed Mrs. Worlow with Rheumatoid Arthritis, and Dr. Gray, PERS' IME physician, also determined that Mrs. Worlow suffered from Rheumatoid Arthritis. The following evidence in the Record supports this:

1. Dr. Arthur Brown's PERS Form 7 and his attached medical records. See Vol. II, R. 152-156.
2. Dr. Kevin Asa's PERS Form 7 and his attached medical records, including diagnostic test results. See Vol. II, R. 159-175; Vol. II, R. 77-83.
3. Dr. Kevin Hayes Medical Source Statement (see Vol. II, R. 70-72) and various medical records. See Vol. II, R. 73; 96-97; 124, 125-127.
4. Dr. Sheila Atiq, February 14, 2006 office note. See Vol. II, R. 68-69.
5. Dr. Laura Gray, the doctor that PERS sent Mrs. Worlow to for an independent medical evaluation. See Vol. II, R. 147-149. Dr. Gray also assessed Mrs. Worlow as suffering from hyperthyroidism, chronic plantar fasciitis, multi-joint pain and depression.

Of these five licensed physicians, the record indicates that three of them -- Drs. Brown, Asa and Hayes -- saw Mrs. Worlow on more than one occasion. In fact, Mrs. Worlow had seen her current rheumatologist, Dr. Sheila Atiq, less than a month before the hearing as reflected in the transcript. However, Mrs. Worlow didn't have that report or the result at the hearing. One of

the Committee members, Dr. Blackston, asked during the hearing if the Committee had that report available. (Vol. II, R. 47). The Hearing Officer, Ms. Jones, indicated that PERS would let her know if they needed the additional report, but the record reflects no indication that any such request occurred. (Vol. II, R. 56-57). In its Appellant's Brief submitted to this Court, PERS states that Mrs. Worlow only saw Dr. Asa on one occasion. This is simply wrong: Mrs. Worlow had seen this Rheumatologist on multiple occasions during mid-2005 and early 2006: July 26, 2005 (Vol. II, R. 160), August 23, 2005, September 20, 2005, November 21, 2005, and January 17, 2006 (Vol. II, R. 80). Apparently, PERS took no interest in reviewing the additional 60 pages of medical records submitted by Mrs. Worlow prior to her hearing before the Disability Appeals Committee on May 19, 2006. (Vol. II, R. 65-129).

Other examples of objective and credible medical evidence of Mrs. Worlow's disabling physical condition replete throughout the record are the detailed findings on physical examination recorded by her treating physicians. "[S]ubstantial evidence has been defined as 'such relevant evidence as reasonable minds might accept as adequate to support a conclusion.'" *Public Employees' Retirement System v. Bishop*, 942 So.2d at 264, ¶ 20 (citing *Marquez*, 774 So.2d at 425, ¶ 13)). Much like the *Bishop* case, in which PERS merely stated that Bishop "lacks sufficient objective medical evidence," despite "objective diagnoses made by treating physicians," PERS' conclusion that Mrs. Worlow had not been definitively diagnosed with Rheumatoid Arthritis is not substantiated by the record in this case. *Bishop*, 942 So.2d at 265 ¶ 27. See also, *Public Employees' Retirement System v. Waid*, 823 So.2d 595, 597, ¶ 5 (Miss. Ct. App. 2002). Note the following excerpts of findings on physical examination of Mrs. Worlow:

1. Dr. Brown's May 20, 2005 description of "rapidly progressing" arthritic symptoms ("synovial thickening in right wrist, elbow, and ankle") and his June 14, 2005 finding of tenderness in her wrist area particularly. (Vol. II, R. 155; Vol. II, R. 154 respectively).

2. Dr. Asa's findings on physical examination at the June 26, 2005 initial visit ("MCP's slightly swollen – right, decreased range of motion – shoulders, tender across MCPs, rheumatoid nodules on fingers, pain on motion – shoulders, pain on motion – wrists, ankles tender, MTPs tender, knees have crepitus....") and his findings on the January 17, 2006 visit ("small rheumatoid nodule over the distal interphalangeal joint ... minimal synovitis"). See Vol. II, R. 162 and Vol. II, R. 81, respectively.

3. Dr. Sheila Atiq's findings on physical examination on the February 14, 2006 initial visit ("TM joints have significant crepitus. Neck has full but tender range of motion. Bilateral shoulders have full but tender range of motion. Bilateral wrists, MCPs, PIPs, and DIPs have no active synovitis, however tenderness on palpation....[b]ilateral knees have significant crepitus with mild synovitis."

Additionally, the Committee's statement that there was no definite diagnosis of arthritis in the record "because the lab work that Dr. Asa had run returned normal" is flat wrong. Diagnostic tests performed by Dr. Asa on Mrs. Worlow's blood during the relevant time period conclusively and objectively indicate that Mrs. Worlow tested positive for Rheumatoid arthritis as evidenced by the positive Rheumatoid Factor test result on July 26, 2005. (Vol. II, R. 167). Test results also indicated that the Rheumatoid Titer scored at 320 on that day. (Vol. II, R. 166). This was significantly elevated from the Rheumatoid Titer of 88 tested by Dr. Brown only two and a half months earlier. (Vol. II, R. 155). The C-Reactive Protein test result submitted to Dr. Asa on July 26, 2005 also showed a high presence of this protein in Mrs. Worlow's liver that reflects a high degree of inflammation within the body. (Vol. II, R. 170). This test result indicates that Mrs. Worlow was experiencing severe inflammation in her body. See Fn. 2, *supra*. The x-rays of Mrs. Worlow's hands and feet showed normal x-rays, with the exception of the chronic plantar fasciitis. However, the fact that her hands and feet did not show "significant

bone pathology” do not make the above described diagnostic test results any less credible or objective: It is reasonable to believe her x-rays would show an absence of “significant bone pathology” if she had only recently begun experiencing the high degree of joint inflammation, pain and swelling that Mrs. Worlow complained of, as compared with someone who has suffered from Rheumatoid Arthritis for many years.

Finally, since April 29, 2005, Mrs. Worlow was consistently treated with high doses of strong Rheumatoid Arthritis medications, such as Methotrexate, Humira and Naprosyn, pain medications such as Lortab and anti-depressants such as Lexapro and Klonopin. Particularly with the increased risks of side effects of powerful drugs like Methotrexate and Humira, it is simply illogical—and arbitrary and capricious—to suggest that Mrs. Worlow did not have a definitive diagnosis of Rheumatoid Arthritis. See *Bishop, supra*.

Accordingly, for the above stated reasons, there was more than adequate objective medical evidence in the record to support Mrs. Worlow’s disabling medical condition of Rheumatoid Arthritis, and the record was utterly devoid of evidence that she did not suffer from Rheumatoid Arthritis. As the Court of Appeals admonished in *Dozier, supra*, while “[w]e are mindful that PERS is the finder of fact, . . . PERS’s opinion is not conclusive, and PERS cannot choose to ignore uncontroverted evidence provided by the treating physicians.” *Public Employees’ Retirement System v. Dozier*, 995 So.2d at 141-42, ¶ 19 (citing *Public Employees’ Retirement System v. Dearman*, 846 So.2d 1014, 1018 ¶ 11 (Miss. 2003)).

There was also an abundance of medical evidence in the record to show that Mrs. Worlow could not perform her job as a teacher of 4th grade special education students at Aberdeen School District, following her flare up of Rheumatoid Arthritis in the Spring of 2005.

Mrs. Worlow testified, without contradiction, that she was often unable to walk during the Spring of 2005, and that her immobility was nearly constant in the month of May. She

testified that she was unable to dress herself, bathe herself, or otherwise perform routine but necessary personal care tasks, and that she was unable to grip, grasp and hold items such as pencils and pens, books, and keys. She testified that she was unable to turn the ignition to her car. She further testified that when she did get to school in May, she required assistance getting into the school building and that she was often times unable to stay more than an hour or so at her job. Mrs. Worlow's testimony as to her inability to perform her job duties and responsibilities is corroborated by that of her employer, the Aberdeen School District. **The PERS Form 6B signed by her supervisor, Chester Leigh, stated unequivocally that Mrs. Worlow was unable to perform the requirements of her job. (Vol. II, R. 140).** Specifically, he stated that Mrs. Worlow was unable to perform general student supervision and that she could not discharge routine teacher duties. (Vol. II, R. 140). Notably, the Employer made no effort whatsoever to provide Mrs. Worlow with another job within the agency or other agency covered by PERS. (Vol. II, R. 140).

The case of *Public Employees' System v. Winston* is analogous to the case *sub judice*, in light of the fact that in that case, the testimony of four physicians as well as the employee's supervisor opined that the employee was disabled and could not perform her job duties. *Public Employees' System v. Winston*, 919 So.2d 106, 108-109, ¶11 (Miss. Ct. App. 2005). The Court found that in light of such testimony, PERS lacked substantial evidence to support its denial of benefits to the claimant. *Winston*, 919 So.2d at 109. See also, *Public Employees' Retirement System v. Ross*, 829 So.2d 1238, 1242 (Miss. 2002) (no contradictory medical evidence and all evidence, including the opinion of the employee's supervisors, supported the conclusion that the employee was unable to perform his job due to his medical condition). When presented with uncontradicted medical opinions, records and reports indicating that physical and/or mental ailments suffered by a claimant prohibit him or her from performing the physical requirements of

employment, PERS must concede and award disability benefits to the member. To do otherwise, PERS' determination lacks evidence and is arbitrary and capricious. *Stevison v. Public Employees' Retirement System*, 966 So.2d at 880 ¶ 28.

The PERS Form 7s submitted by Mrs. Worlow's treating physicians, Dr. Arthur Brown and Dr. Kevin Asa, and the Medical Source Statement⁷ submitted on her behalf by Dr. Kevin Hayes, all unequivocally state that Mrs. Worlow suffers from Rheumatoid Arthritis, and that as a result of her Rheumatoid Arthritis, she is unable to perform the job duties and responsibilities of a teacher, such as prolonged sitting or standing, gripping and grasping, and general supervision of students. There is no legitimate evidence to contradict these opinions of Mrs. Worlow's treating physicians.

The report generated by PERS' physician, Dr. Laura Gray, following a purported IME on November 28, 2005 does not support PERS' decision to deny benefits to Mrs. Worlow. In fact, Dr. Gray's report helps Mrs. Worlow, as it (1) confirms that the Rheumatoid Arthritis diagnosis, as well as depression, hyperthyroidism, fatigue and plantar fasciitis; and (2) it does not dispute Mrs. Worlow's assertion that she cannot perform the physical requirements of her job. Dr. Gray's report indicated that she reviewed "old medical records of Dr. Kevin Asa from August 2005 to the present as well as Dr. Arthur Brown" and including x-rays and labs. (Vol. II, R. 149). Other than an August, 2005 reference point, there is no indication in Dr. Gray's report, or in any aspect of this record, which specific records she reviewed, or who sent them to her for review, nor is there any indication that Dr. Gray reviewed the two PERS Form 7s completed by both of Mrs. Worlow's treating physicians, Dr. Asa and Dr. Brown, which were already on file

⁷ Interestingly enough, the Disability Appeal Committee's Proposed Statements of Fact, Conclusions of Law and Recommendation contain no reference to Dr. Hayes' Medical Source Statement. This further evidences the arbitrary and capricious nature of PERS' decision to deny benefits, as the MSS was prepared in detail by a doctor who saw Mrs. Worlow on at least 3 occasions and as recently as the end of February, 2006, less than three months before the hearing. He, in great detail, outlines the residual functional capacity of Mrs. Worlow.

with PERS at the time of Dr. Gray's November 28, 2005 evaluation. Dr. Asa and Dr. Brown's Form 7s were filed with PERS on August 3, 2005 and September 26, 2005, respectively. (Vol. II, R. 159, 152). In her concluding paragraph, Dr. Gray states that "[w]hile her condition may be painful, her Rheumatologist does not suggest she is unable to continue her duty as a teacher." (Vol. II, R. 149). It is obvious that Dr. Gray did not have the PERS Form 7s of Dr. Arthur Brown and Dr. Kevin Asa before her when she made that statement. In view of the Record filed in this cause, and in particular, in light of the statements set forth on the two PERS Form 7s, Dr. Gray's statement is simply incorrect, and cannot by any stretch of the imagination be considered the "substantial evidence" needed to undergird PERS' decision to deny benefits.

Thus, there is simply no evidence in the record to support PERS' decision to deny benefits to Mrs. Worlow, and the Circuit Court Judge acted in accordance with the law when he ordered that benefits be paid to Mrs. Worlow. She met the test for disability set forth by statute, and presented an overabundance of credible, reliable, and objective medical evidence to support her claim. The only conceivable explanation of PERS' decision to deny Mrs. Worlow benefits is pure and simple mistake, that is, in its failure to correctly read Mrs. Worlow's diagnostic test results from Dr. Asa. This theory is quite plausible: Unfortunately, PERS and its Disability Appeals Committee is no stranger to error in this case. The Disability Appeals Committee summarized the testimony of Mrs. Worlow, often inaccurately. See Vol. II, R. 16-17: "Ms. Worlow did not appear before this Committee because she did not *want* to travel to Jackson." In fact, the record reflects that Mrs. Worlow could not travel due to her physical condition as described by her treating physician, Dr. Sheila Atiq, who indicated that "Patient is advised not to take long journeys because of her arthritic condition as pain may worsen with prolonged immobility." See Vol. II, R. 203. Also, the error of another Claimant's name and social security number on page 132 of the Record makes one wonder what, in fact, the members of the Medical

Review Board and the Disability Appeals Committee actually had in front of them when they denied Mrs. Worlow's claim and, in the case of the DAC, wrote the illogical statement that there was no definite diagnosis of arthritis in Mrs. Worlow's case. This question is particularly disturbing when one considers that the record certified by PERS and presumably relied upon by the Disability Appeals Committee, contains seven pages of completely unrelated medical records of yet another PERS claimant, Nelly Jones. See Vol. II, R. 204-210.

To purposely ignore an over-abundance of credible, consistent and objective medical evidence of disability is a textbook example of a decision unsupported by substantial evidence, and one that is clearly arbitrary and capricious as defined by the appellate courts of this state. To cling to an obvious mis-reading of diagnostic tests, without anything contradictory even by its own examining physician, and in the face of no less than five examining and licensed medical doctors is an act not done according to reason or judgment but in a whimsical manner, and implies a lack of understanding of controlling medical principles and findings, pursuant to the law as stated herein.

All of the evidence presented to PERS in this case supports Mrs. Worlow's claim for benefits, and there was no reasonable evidence presented to dispute her claim to find that Mrs. Worlow failed to meet her burden was not a "reasonable and unbiased evaluation of the record evidence." *Stevison, supra*, at 883 (¶ 28).

CONCLUSION

The Circuit Court of Hinds County, Mississippi, First Judicial District, correctly found that there was insufficient evidence in the record to support the denial of PERS disability benefits to Rebecca Worlow. The Circuit Court's review of the full record in the case *sub judice*, revealed that there was overwhelming evidence which had been presented to the Public Employees' Retirement System to support a finding that Mrs. Worlow was permanently disabled according to the definition of disability as found in Section 25-11-113 of the Mississippi Code, 1972, and no reasonable evidence to support a finding otherwise. Where there is no substantial evidence undergirding a denial of benefits by PERS, the decision cannot stand.

The purported reasons set forth in the Proposed Statement of Fact, Conclusions of Law, and Recommendation of the Disability Appeals Committee upon which the Order of the PERS' Board of Trustees relied are without merit and insufficient under the law to support the denial of benefits to Mrs. Worlow, and are in fact arbitrary and capricious. The Circuit Court did not overstep its authority in reversing the denial of benefits to Mrs. Worlow, but followed the law when it could not find any substantial evidence to support PERS' decision to deny benefits.

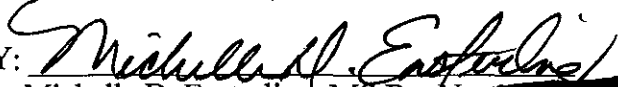

As shown herein, PERS' stated reasons for denying Mrs. Worlow disability benefits pursuant to Section 25-11-113 of the Mississippi Code Annotated, 1972, are woefully inadequate and, quite simply, insufficient to arise to even the "scintilla" of evidence necessary to support its denial. To the contrary, Mrs. Worlow has presented an overwhelming abundance of credible, consistent and objective medial evidence of her disability, and the same has been demonstrated in her Brief.

Accordingly, the decision of the Hinds County Circuit Court, First Judicial District, reversing PERS' denial of benefits should be affirmed, and all benefits due Mrs. Rebecca Worlow should be reinstated with penalties and interest at the legal rate.

RESPECTFULLY SUBMITTED, on this the 6th day of January, 2011.

REBECCA WORLOW, APPELLEE

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CERTIFICATE OF SERVICE

I, Michelle D. Easterling, Attorney for the Appellee, Rebecca Worlow, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing *Brief of Appellee*, to the following:

Honorable Katie L. Trundt
Special Assistant Attorney General
Public Employees' Retirement System
429 Mississippi Street
Jackson, MS 39201-1005

Honorable Winston Kidd
Hinds County Circuit Court Judge
Post Office Box 327
Jackson, MS 39205-0327

SO CERTIFIED, this the 6th day of January, 2011.


Michelle D. Easterling, MS Bar # [REDACTED]

CERTIFICATE OF MAILING

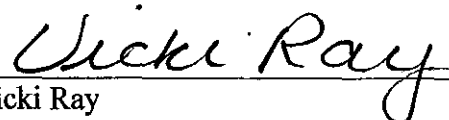
The undersigned, Vicki Ray, Legal Assistant at the law firm of Edwards, Storey, Marshall, Helveston & Easterling, LLP, does hereby certify that she has this day mailed, by United States first class mail, postage prepaid, a true and correct copy of the foregoing *Brief of Appellee* to the following:

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SO CERTIFIED, this the 6th day of January, 2011.


Vicki Ray