

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Sabrina R. Carter was employed by respondent Department of Developmental Services as a Psychiatric Technician Assistant. By virtue of her employment she is a state safety member pursuant to Government Code section 21151.

On September 19, 2001, Respondent Carter submitted an application for industrial disability retirement. CalPERS initially approved her industrial disability retirement, and she retired for disability effective September 6, 2002, on the basis of orthopedic (upper extremities and back) conditions.

During a routine evaluation of disability cases, Respondent Carter's case was set for review. CalPERS obtained or received medical reports concerning Respondent Carter's orthopedic (upper extremities and back) conditions from competent medical personnel. After review of the reports, CalPERS determined that Respondent Carter is no longer disabled or incapacitated from the performance of her duties as a Psychiatric Technician Assistant.

By letter dated November 25, 2009, CalPERS notified Respondent Carter that it had determined, after a review of new medical reports and other information which had been obtained, that she was no longer disabled from her job duties, and would be reinstated. Respondent Carter appealed, and a hearing was held on August 14, 2012.

Respondent Carter was evaluated by Dr. Ernest Miller, an Orthopedist, who reviewed extensive medical reports and performed a physical examination. In his report, Dr. Miller opined that Respondent Carter is not substantially incapacitated for the performance of her duties as a Psychiatric Technician Assistant. Dr. Miller testified that Respondent Carter's complaints of pain were "non-specific" and "non-anatomic symptoms that are not consistent with musculoskeletal problems or injuries," and that she exaggerated her symptoms and complaints. All tests found Respondent Carter's range of motion to be well within normal limits. Dr. Miller found no evidence of weakness, reflex abnormality, thoracic outlet syndrome, radiculopathy, neurological deficit, nerve damage or impingement.

The Administrative Law Judge (ALJ) also viewed a sub-rosa surveillance DVD showing that Respondent Carter was able to attend a football game, and she was seen performing activities that were inconsistent with claims of pain and disability. The video shows Respondent Carter carrying her infant child for extended periods of time, holding her child high above her head and shoulders; bending to pick up items; bending to pick up her child; pulling a baby stroller out of her car; putting on her right shoe while standing on her left leg (and vice versa); and rising from a sitting position on the grass while holding her baby. The ALJ observed that Respondent Carter was able to perform all these tasks without showing any outward signs of pain or discomfort, and with no signs of caution one would expect from someone who suffers from serious back or shoulder injury and pain.

The ALJ found good cause exists to affirm CalPERS' determination that Respondent Carter is no longer disabled or incapacitated from the performance of her duties as a Psychiatric Technician Assistant. The ALJ also found good cause exists to cancel the industrial disability retirement allowance previously approved for Respondent Carter and to reinstate her to her former position.

The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

November 15, 2012



ELIZABETH YELLAND
Senior Staff Attorney