

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Kareka Mitchell (Respondent) was employed as a Psychiatric Technician by the Department of Mental Health. By virtue of her employment, Respondent was a state safety member of CalPERS. Respondent submitted an application for Industrial Disability Retirement (IDR) on the basis of claimed orthopedic and neurological conditions. Respondent was approved for IDR and began receiving IDR benefits in June 2006.

In September 2009, CalPERS informed Respondent that she would be reevaluated in order to determine whether she continued to be substantially incapacitated and therefore entitled to receive IDR benefits. CalPERS reviewed relevant medical reports. Respondent was examined by three (3) Independent Medical Evaluators (IMEs); Alice Martinson, M.D. (orthopedics), Abdul K. Jaffer, M.D. (neurology) and Oluwafemi Adeyemo, M.D. (psychiatry). All three IMEs are board-certified in their respective area of specialized medical practice. All three IMEs prepared reports wherein they expressed their opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of a Psychiatric Technician for the Department of Mental Health. CalPERS determined that Respondent was no longer substantially incapacitated from performing the usual and customary duties of a Psychiatric Technician. Respondent and the Department of Mental Health received notice of CalPERS determination, which included an instruction that Respondent should be reinstated to her former position. Respondent appealed CalPERS determination. A hearing was held on September 13, 2012.

In order to be eligible to receive disability retirement benefits, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the basis for the claimed disability must be permanent or of an extended and uncertain duration.

Government Code section 21192 gives the Board the authority to evaluate anyone, under the minimum age for voluntary service retirement, who is receiving a disability retirement benefit, for purposes of determining whether that individual continues to be substantially incapacitated. Government Code section 21193 provides that a previously disabled state employee, determined to no longer be substantially incapacitated, shall be reinstated to their former position.

Respondent did not appear at the hearing. No representative of the Department of Mental Health appeared at the hearing. The Administrative Law Judge (ALJ) found that proper notice of the hearing had been provided to both Respondent and the Department of Mental Health. The ALJ accepted relevant jurisdictional documents and proceeded to grant a default judgment in favor of CalPERS, pursuant to the provisions of Government Code section 11520.

Dr. Martinson testified consistently with the findings and conclusions contained in her March 2010, written report. Dr. Martinson found that Respondent had chronic complaints of neck and shoulder pain but that there was no objective evidence of any pathology. Dr. Martinson concluded that Respondent's orthopedic examination was "essentially normal." Dr. Martinson testified that Respondent was not substantially incapacitated from performing the usual and customary duties of a Psychiatric Technician on the basis of any orthopedic condition.

Dr. Adeyemo testified consistently with the findings and conclusions contained in his April 2010, written report. Dr. Adeyemo testified that Respondent was not substantially incapacitated from performing her usual and customary duties because of any psychological condition.

Dr. Jaffer testified consistently with the findings and conclusions contained in his April 2010, written report. Dr. Jaffer testified that Respondent was not substantially incapacitated from performing her usual and customary duties because of any neurological condition.

Additional documentary evidence was received and considered by the ALJ. In a September 2009, written report, Respondent's treating neurologist (Bijan Zardouz, M.D.), stated that Respondent's "neurological examination is stable. There is no evidence of any focal neurological deficit." In a November 2009, written report, Respondent's treating orthopedist (Arthur S. Harris, M.D.), stated that Respondent "is to return to regular duties." In pre-employment forms completed by Respondent in March 2008, for jobs as a Psychiatric Technician which she performed after retiring, Respondent stated that she did not have any neck or back problems. She denied having had any injuries to her neck or back, denied having migraine headaches and denied ever having been "disabled" for any reason.

After considering all of the evidence and testimony, the ALJ found that the uncontradicted competent medical evidence and other relevant evidence established, by a preponderance of the evidence, that Respondent is no longer substantially incapacitated from performing the usual and customary duties of a Psychiatric Technician with the Department of Mental Health. Accordingly, the ALJ denied Respondent's appeal and ordered that Respondent should be reinstated to her former position and that her industrial disability allowance should be terminated.

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 motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

November 15, 2012

  
\_\_\_\_\_  
RORY J. COFFEY  
Senior Staff Attorney