ATTACHMENT A

THE PROPOSED DECISION

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BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Application for Disability Retirement of: KAREN A. CRAWFORD Respondent, and DEPARTMENT OF DEVELOPMENTAL SERVICES, PORTERVILLE STATE HOSPITAL, Respondent.	Case No. 2011-0321 OAH No. 2012080784

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PROPOSED DECISION

This matter was heard before Dian M. Vorters, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on May 15, 2013, in Fresno, California.

Jeanlaurie Ainsworth, Senior Staff Counsel, represented the California Public Employees' Retirement System (CalPERS and complainant).

Karen A. Crawford (respondent) was present and represented herself.

There was no appearance by or on behalf of the Department of Developmental Services, Porterville State Hospital (DDS/Porterville).

Evidence was received and the case was submitted for decision on May 15, 2013.

ISSUE

Is respondent permanently disabled or incapacitated from performance of her duties as a Psychiatric Technician (PT), based upon claimed psychological (bipolar, manic depression, biological-chemical imbalance) conditions?

PUBLIC EMPLOYEES RETIREMENT SYSTEM
FILED 6-13 20 13
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FACTUAL FINDINGS

Respondent's Employment History

1. Respondent worked for Porterville as a licensed PT until she retired for service effective December 31, 2009, at age 52. She is a state miscellaneous member of CalPERS with 18.836 years of service. (Gov. Code, § 21150.) She receives a service retirement allowance pending this appeal of the denial of her industrial disability retirement application.

Duties of a Psychiatric Technician

2. Porterville is a residential facility for children and adults with developmental and behavioral disabilities. The facility provides skilled and intermediate care, acute medical/surgical services, and basic care and security of forensic clients. Clients frequently present with physical difficulties, behavioral, emotional, and cognitive challenges, and various medical conditions.

As set forth in the Job Analysis for a PT specific to Porterville, the PT provides nursing care and active treatment to the developmentally disabled. PTs maintain a safe, sanitary, and home-like environment for clients while assisting them with all activities of daily living, including bathing, dressing, grooming, toileting, and dining. PTs may assist with repositioning clients in bed or their wheelchair, escorting clients as needed, changing linens, and some housekeeping duties. PTs accompany clients off facility for events and outings. The PT must be able to restrain or contain clients to prevent injury to self or others. PTs must display patience, alertness, and tact, and be able to work as part of an interdisciplinary team, and alone, without supervision.

PTs perform nursing procedures such as administering medications both orally and by hypodermic injection, and treatments including catheterizations and enemas. PTs prepare clients for intravenous and sterile techniques, and perform/assist with developmental instruction (i.e. feeding, bathing, dressing, tracheostomy (trachs), bowel and bladder functions). PTs assess client health status and report findings to registered nurses and/or physicians. Heath assessment includes obtaining temperature, pulse, respiration rates, performing range of motion exercises, and observing the clients' condition. PTs must have knowledge of CPR, the Heimlich Maneuver, and general first aid.

3. *Physical Requirements of Position/Occupational Title.* In November 2006, respondent and her supervisor signed a Duty Statement that itemized the essential duties and physical demands of the PT position. Respondent's claimed disability is based on a psychological condition, not a physical impairment. Respondent did not contest her ability to perform the physical requirements of the PT position.

Respondent's Disability Retirement Application

4. On December 2, 2009, respondent filed with CalPERS a Retirement Election Application (Application) for Service Pending Industrial Disability Retirement benefits. On

April 28, 2010, respondent filed an Application for Service Pending Disability Retirement benefits with CalPERS. Her last day on payroll was December 30, 2009. She began receiving a service retirement benefit effective December 31, 2009. In her April 2010 Application, respondent provided the following information:

a. Respondent described her specific disability as "Bypolar [sic] (manic depression) 1974, biological-chemical imbalance. More frequent episodes as older."

b. Respondent described her limitations/preclusions as follows: "Needs hospital care, causes me not to be able to do my job, stress and anxiety caused depression."

c. Respondent stated that her illness affected her ability to perform her job as follows: "Made me anxious, nervous, fearful, insecure, can't think correctly, depressed."

5. In September 2010, CalPERS arranged for respondent to participate in a psychiatric examination with Paul Markovitz, M.D., an Independent Medical Examiner (IME). CalPERS also considered information submitted by three of respondent's treating professionals: Michael Barnett, M.D., Andrea Espinosa, M.D., and Kenneth J. Bluestein, MFT. On December 7, 2010, CalPERS notified respondent by letter that having reviewed relevant medical evidence, they had determined that she was not "substantially incapacitated from performance" of her job as a PT. As such, her claim for disability retirement was denied. Respondent timely appealed CalPERS' decision.

Physician's Report on Disability

6. Dr. Barnett examined respondent and completed a Physician's Report on Disability (Physician's Report) on November 6, 2009. In the report, Dr. Barnett indicated that respondent had a "non-work related" injury. Her chief complaint was "bipolar depressed," subjective symptoms were "depression," and objective examination findings were "depression." His diagnosis was "Bipolar NOS." He indicated that respondent was "currently" substantially incapacitated for performance of her PT duties, but the incapacity was not permanent. He submitted a second Physician's Report dated July 16, 2010, based on an examination of respondent on June 18, 2010. In this report, he indicated that her incapacity was permanent. Dr. Barnett did not testify or submit an examination report detailing any psychological/psychiatric testing or the basis for his medical opinions.

7. Mr. Bluestein, examined respondent on November 16, 2009, and completed a Physician Report on November 28, 2009. In the report, Mr. Bluestein indicated that respondent had a "non-work related" injury. Her chief complaint and diagnosis were "bipolar disorder." Her subjective symptoms and objective examination findings were "depression, anxiety." During an acute phase she presented with psychotic features, delusions, suicidal ideation, sleep disturbance, withdrawal, and fear. He reported she was "currently" disabled and the incapacity was "permanent." Mr. Bluestein did not testify or

submit an examination report detailing any psychological testing or the basis for his opinions.

8. Dr. Espinosa, a family medicine physician, examined respondent on November 4, 2009, and completed a Physician Report on December 2, 2009. Dr. Espinosa indicated that respondent had a "non-work related" injury. Respondent's chief complaint was "Unable to perform all duties of job, inability to concentrate, severely depressed." Dr. Espinosa gave a diagnosis of "Bipolor [sic] disorder" based on a psychiatric evaluation "per psychiatrist." In her opinion, respondent's incapacity was permanent "for this position" as respondent "cannot work around psychiatric clients." Dr. Espinosa testified at hearing but did not administer any psychological/psychiatric tests or provide an examination report detailing the basis for her medical opinions.

9. Dr. Espinosa has been respondent's family practitioner since 2004. She is a board certified family physician and holds a master's degree in psychology. In her private practice, she treats 15 patients a day working 15 hour days. She testified on respondent's behalf and submitted a letter dated February 23, 2012, which offered general background information and a critique of Dr. Markovitz's IME report. Dr. Espinosa disagreed with Dr. Markovitz's opinion that respondent does not suffer bipolar disorder. She testified that family practitioners are "doing 60 percent of mental health treatments." She explained that not all "bipolars" have manic or "up" states, some only have a depressed state. She has seen respondent in her manic state. She recalled a time when respondent's husband came in and reported his fear that respondent might hurt him. In her opinion, excessive exposure to environmental stressors can change the chemical makeup of your brain. It is noted that of her 2000 patient base, only three have bipolar disorder. Dr. Espinosa criticized Dr. Markovitz's findings based on his single visit with respondent and incomplete records.

10. Dr. Espinosa shared that respondent was working with Dr. Barnett, a psychiatrist at Porterville. He diagnosed respondent with Bipolar Disorder and Personality Disorder. Dr. Espinosa acknowledged that better treatment may be available. However, access to medication is a function of respondent's health insurance. Dr. Espinoza referred respondent to psychiatrist Satnam S. Atwal, M.D. and relied upon Dr. Atwal's diagnosis and medication assessments. Dr. Espinosa did not know if Dr. Atwal provided any form of talk therapy or simply medication management. Dr. Espinosa does not prescribe psychotropic medication to respondent but leaves this to Dr. Atwal, who she confers with once every two months. Dr. Espinosa stated that respondent previously received therapy from Mr. Bluestein, but no longer sees him. This contradicts respondent's testimony that she continues to see her therapist bi-monthly.

11. Dr. Atwal did not testify or write a report of his findings. Respondent submitted his handwritten notes on two prescriptions which stated the following:

a. Note dated October 29, 2012: "Karen is under my psychiatric care and take [sic] 5 different kinds of medications to treat her illness."

b. Note dated May 2, 2013: "Karen has been suffering severe form of bipolar disorder and intermittent psychotic symptoms. She is barely functioning with current aggressive psychiatric treatment."

12. Mr. Bluestein is a therapist and has seen respondent since November 2007. He wrote two letters to the Department of Social Services presumably in support of her social security income claim. In letters, dated August 17, 2012, and March 22, 2013, he provided an Axis I diagnosis of Bipolar I Disorder. His Axis II and III diagnoses were "deferred." His Axis IV diagnosis was "primary support group and occupational problems." Neither letter provides the basis for his diagnosis, or whether he administered any tests or relied on other medical conclusions.

13. Mr. Bluestein's reports conclude that "[Respondent's] condition remains chronic, and she is still unable to work. Her incapacity is permanent." He disclosed "regressive episodes" on a bi-weekly basis, where respondent becomes depressed, emotionally unstable, and delusional. In his March 2013 letter, he described respondent as intermittently withdrawn, sad, and distracted with poor eye contact. She reportedly displayed psychomotor retardation and notable mood swings. Her thought processes could be "scattered and disorganized" with "loose associations." And, she "appears internally preoccupied."

14. Regarding respondent's capabilities, Mr. Bluestein stated, "[Respondent] continues to be unable to work due to depression and anxiety, which occurs a minimum of two times per week. During these episodes, she is afraid to drive or answer the phone." Because her home is purportedly a low stress environment, Mr. Bluestein opined that stressful PT duties would "markedly exacerbate her anxiety and depression." He believes that her return to work would present a "significant safety concern" for clients and respondent. With continued therapy and medication, her prognosis was "guarded."

IME Report – Paul J. Markovitz, M.D., Ph.D.

15. On or about October 18, 2010, Dr. Markovitz conducted an examination of respondent pursuant to IME protocol. Dr. Markovitz is a board certified psychiatrist. He has maintained a clinical practice since 1993, seeing patients with borderline personality disorder for 30 hours a week. He also works 25 hours a week at the San Joaquin County indigent mental health hospital where the majority of patients are diagnosed with developmental disabilities, severe borderline, and schizophrenia.

Dr. Markovitz interviewed respondent, conducted psychological testing, and reviewed medical records and disability forms. He prepared a report of his findings and medical conclusions dated October 18, 2010. He also testified at hearing.

16. Respondent articulated her chief complaint as "I have Bipolar Disorder and cannot work anymore." She has a history of depression since age 13 and was reportedly clinically diagnosed with depression at age 17. More recently, she was told by Dr. Barnett

that she is bipolar based on sleep trouble and past shopping binges. Respondent had been hospitalized on nine occasions for depression due to severe suicidal ideation, three times between 2008 and 2010. She has never been hospitalized for mania.

17. Respondent's most current complaint began in June 2009 while working at Porterville. She expressed dislike for recent changes instituted at Porterville. Supervisors cut her hours and moved her to a section that housed more impaired children. She worried that she could not handle them. Though no incidents occurred, she believes the workplace changes caused depression and anxiety. Dr. Markovitz noted that respondent was twice hospitalized in the few years before the changes.

Respondent reported to Dr. Markovitz her then current symptoms of insomnia, mild decreased appetite/weight, carbohydrate craving, crying spells, poor concentration, lethargy, and occasional spending sprees lasting a few hours. Her history included anger control issues, mood reactivity, attention span issues, headaches, and irritable bowels. She told Dr. Markovitz that if she got better, she did not want to return to work because "I think it makes me worse. I want to volunteer somewhere. It is getting harder mentally and physically to work there. I'm not as fast as I used to be. I felt uncomfortable at work. ..."

18. Dr. Markovitz observed respondent's mood during the interview to be "mildly depressed." She brightened only when discussing her grandchildren. She enjoys babysitting them, traveling, reading, and attending church. She displayed concentration and memory issues. She reported no suicidal thoughts since September 2009, but stated that "the depression is always there." She denied any manic behavior which is supported by the medical record. She stated, "I spend too much on occasion, but that is about it." Dr. Markovitz did not detect any signs of psychosis during the interview and found no support in the record for a history of psychotic episodes. No obsessive conduct or anxiety was present at the interview or in respondent's medical records.

19. Dr. Markovitz administered to respondent a questionnaire called the Symptom Checklist-90-R (SCL-90-R). The test is a clinical assessment tool designed to evaluate a broad range of psychological problems and symptoms of psychopathology. Respondent's results indicated a significant level of interpersonal sensitivity issues, moderate depression, low grade worry, and ongoing sleep problems. Dr. Markovitz provided the following DSM-IV diagnosis for respondent:

I. Major Depression, recurrent, severe
II. Borderline Personality Disorder
III. Headaches, PMS, irritable bowel syndrome, obstructive sleep apnea, gastroesophogeal reflux
IV. Mild stressors from her dislike for new job requirements
V GAF 65

Notably, Dr. Markovitz found no basis for a diagnosis of Bipolar Disorder. He assessed that the medications respondent has been taking have not resulted in improvements

over the last four years. Respondent currently takes Lithium Carbonate (300 mg), Geodon (60 mg), Seroquel (200 mg), Wellbutrin (150 mg), Propranolol (10 mg), and Temazepam (30 mg). Dr. Markovitz opined at hearing that her current regime is ineffective both in substance and dose. He outlined three groups of psychotropic medications that could be tried to effectively treat respondent's depression, starting with Serotonin Reuptake Inhibitors or SRIs (which include high doses of Prozac, Zoloft, Paxil); the next group being Serotonin Noradrenaline Reuptake Inhibitors or SNRIs (which include Effexor (400 mg), Cymbalta (10 mg), Pristiq (300-400 mg)); and finally Monoamine Oxidase Inhibitors (MAOIs), which are the broadest spectrum of pharmaceuticals that work in most individuals and are administered in oral and patch form.

20. Dr. Markovitz conceded that he last saw respondent in October 2010, which was two and one-half years ago, and her condition may have gotten worse in the interim. As such, he would recommend that she get on the right medication immediately and initially return to work for 20 hours per week with some disability. On the proper medication, it could take six to 12 weeks for her to recover. Dr. Markovitz stated that individuals lose synapses in the brain but those grow back over time.

However, Dr. Markovitz noted that respondent is resistant to returning to "a work situation she no longer enjoys" and desires to spend time with her family. He found this relevant because, "If you don't want to do something, it makes it harder to go back." As such, he rated her prognosis for improvement as "guarded."

21. In response to specific disability questions posited by CalPERS, Dr. Markovitz provided his professional opinions as follows:

a. *Are there specific duties member is unable to perform?* Having reviewed the description for a PT and the list of physical requirements for the position, Dr. Markovitz believes that respondent's depression is treatable and reversible but she has been inadequately treated for years. She can work at this time, but does not like her job situation. She is able to care for her grandchildren which is less strenuous but similar in nature to the PT duties. She is able to record vital signs, do passive range of motion exercises, change bed linens, help dress clients, reposition clients, assist them in self-care, do charting and housekeeping duties, and help with forensic clients. Dr. Markovitz acknowledged that 40 hours a week will be "rigorous mentally" for respondent at this time, but she has shown an ability to work these hours in the past with similar mental problems.

b. *Is member substantially incapacitated for performance of her usual duties?* In Dr. Markovitz's opinion, respondent is not incapacitated such that she cannot perform her normal job duties. She is able to read, travel, care for her home and young children, and attend church. Her residual depression would benefit from effective treatment.

c. *If incapacitated, is the incapacity permanent or temporary? Duration?* In Dr. Markovitz's opinion, respondent is not incapacitated at this time. She has symptoms

of Depression and Borderline Personality Disorder, both of which will "unequivocally benefit from treatment." She is not receiving effective treatment at this time.

d. *Did member cooperate with examination or did you detect exaggeration?* Dr. Markovitz stated that respondent put forth good effort. However, she made it "abundantly clear she is functioning fairly well at home, and dislikes her current job situation, and has no plans of returning to work, even if she has remission in toto of her illness."

e. *Financial Affairs/Checks?* Respondent is capable of handling her own financial affairs including endorsing checks.

22. At hearing, Dr. Markovitz offered his opinion about the soundness of Mr. Bluestein's conclusions. He noted that Mr. Bluestein was a psychologist, not a psychiatrist. In his opinion, Mr. Bluestein's Axis I diagnosis of "Bipolar I Disorder" is incorrect. He reiterated that respondent did not meet any DSM-IV criteria for Bipolar I. Dr. Markovitz found it "appalling" that Mr. Bluestein did not provide Axis II and III diagnoses. The Axis I is where treatable psychiatric disorders are placed, which in respondent's case is Depression. The Axis II is where more difficult-to-treat disorders, like Personality Disorders, are placed. The Axis III is where physical disorders, not related to the brain, are placed, such as asthma, cancer, or in respondent's case, headaches, irritable bowl, PMS, and hypertension. Dr. Markovitz agreed that respondent had "scattered thoughts" but was curious about Mr. Bluestein's comment that she was "internally preoccupied" since she does not have schizophrenia.

23. Dr. Markovitz attempted to explain the misdiagnosis by opining that Bipolar Disorder and Borderline Personality Disorder have similar criteria. He stated that "mood swings" do not make you "manic." The criteria for Bipolar Disorder include mood swings, but the highs and lows last for more than three days at a time. Individuals with Borderline Personality Disorder have rage and anger control issues related to mood reactivity during which they react strongly to things in their environs. He summarized that her diagnosis with Bipolar Disorder does not fit the facts and she has been on the wrong treatment since she was 13 years of age. Her depression and anxiety are interrelated just as the flu is related to headaches and pain. Her depression is not caused by her environment, it is caused by a disease of the brain and must be treated with proper medication and counseling.

Respondent Crawford

24. Respondent is 56 years of age, has been married to Johnie Crawford for 36 years, and has eight grandchildren, six of whom she sees often. She has an Associate's degree from Bakersfield College. After completing the PT program at California State University, Bakersfield, she obtained her license and began working at Porterville. She stated she worked there for 29 years. She liked the schedule that allowed her to work full days and then have days off. She acknowledged having the same psychiatric symptoms while working as she does now, except her current issues are more severe. For the last two years, she has seen Mr. Bluestein twice a month.

When asked what duties she cannot perform, respondent stated, "Take downs – a person gets on each arm and leg and puts a person against a wall." She conceded that she never had to do one as "other people did it." She stated that she could feed clients as that was "not hard." She sometimes had problems dressing clients. It is noted that respondent's disability claim is based on mental health issues, not physical issues.

25. Mr. Crawford was a PT at Porterville for 15 years. He testified that when respondent is depressed, she is "not able to focus." He has had to hide the keys to the vehicles because she "would get so depressed she didn't feel like living." She has gone to parks and fields and wanted to stay until she dies. The last of these episodes was in 2010. Mr. Crawford took her to the hospital where she remained for three days, was released and readmitted for eight days. In 2012, respondent's depressed states would last two months. He recalled an instance when she was manic and wanted to clean the house. She would leave one job unfinished and drawers open to begin another job, leaving the house a mess. The last manic episode was four to five years ago. He stated that he has observed her to be manic four to five times in the past, but most often, she is depressed. Mr. Crawford confirmed that respondent worked during these depressed and manic episodes.

26. In consideration of the entire record, respondent did not establish that she was permanently disabled from the performance of her duties as a PT for Porterville when she applied for disability retirement in December 2009 or April 2010. She presented insufficient evidence that she is unable to perform her usual duties as a PT, suffers from Bipolar Disorder, or has received effective mental health treatment.

LEGAL CONCLUSIONS

1. By reason of her employment, respondent is a state miscellaneous member of CalPERS and eligible for disability retirement under Government Code section 21150.

2. To qualify for disability retirement, respondent must prove that, at the time she applied for disability retirement, she was "incapacitated physically or mentally for the performance of ... her duties in the state service." (Gov. Code, § 21156.) As defined in Government Code section 20026:

> "Disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended and uncertain duration, as determined by the board, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion.

3. The burden is on respondent to present competent medical evidence to show that, as of the date she applied for disability retirement, she was substantially unable to perform the usual duties of a PT for Porterville. (*Harmon v. Bd. of Retirement of San Mateo County, supra,* 62 Cal.App.3d at p. 691.)

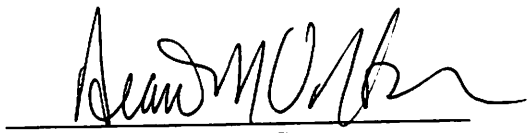
4. Respondent failed to make an adequate showing of substantial disability. Competent medical evidence supports a finding that respondent is chronically depressed and has not received effective treatment. Respondent suffered psychiatric symptoms and episodes while working as a PT for Porterville. Her decision to leave work was precipitated by a change in her work schedule and duty assignment. She was unhappy with these changes. She does not wish to return to her duties at Porterville and would prefer to do volunteer work and care for her grandchildren. That choice is hers to make. However, there is insufficient evidence that respondent's mental health issues prevent her from resuming her customary duties.

5. There is conflicting and insufficient evidence that she was properly diagnosed with Bipolar I Disorder. The testimony of Dr. Markovitz on respondent's mental state was more persuasive than that of Dr. Espinosa. Though both are medical doctors, Dr. Markovitz was the only psychiatrist to testify. The diagnosis provided by Dr. Espinosa, a family practitioner, was based Dr. Atwal's conclusions. However, Dr. Atwal did not testify or prepare a report of how he arrived at a Bipolar Disorder diagnosis or the soundness of his medication assessments. The record does not support a finding that respondent suffers from Bipolar Disorder or "manic depression." On this record, respondent more likely suffers from Major Depression, a DSM-IV disorder which is treatable and not permanent. Sound pharmacological treatment depends on a proper diagnosis. Respondent apparently has not had the benefit of either.

ORDER

The application of respondent Karen Crawford for disability retirement is DENIED.

DATED: June 10, 2013



DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings