

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Karen Crawford (respondent Crawford) was employed as a Psychiatric Technician at Department of Developmental Services, Porterville State Hospital. By virtue of her employment, respondent Crawford is a State miscellaneous member of CalPERS subject to Government Code section 21150.

Respondent Crawford claims a psychiatric injury. In her application for disability retirement, respondent Crawford claimed she suffered from Bipolar disorder and stated she "needs hospital care, causes me not to be able to do my job, stress and anxiety caused depression." She further stated her illness affected her ability to perform her job as follows: "made me anxious, nervous, fearful, and insecure, can't think correctly, depressed." Respondent Crawford service-retired and has been receiving service retirement benefits.

CalPERS arranged for respondent Crawford to be examined by an Independent Medical Examiner, Dr. Paul Markovitz, a board-certified Psychiatrist. Dr. Markovitz found that she was not substantially incapacitated from the usual and customary duties of a Psychiatric Technician.

After reviewing Dr. Markovitz' reports and other medical evidence, staff denied respondent Crawford's application for disability retirement. Respondent Crawford appealed the decision and a hearing was held on May 15, 2013.

Under the applicable court rulings construing disability under the California Public Employees' Retirement Law (PERL), respondent has the burden of showing that she is substantially incapacitated from performing the usual duties in her position as a Psychiatric Technician. Prophylactic restrictions and risk of possible future injury cannot support a finding of disability. (*Mansperger v. Pub. Employees' Ret. System* (1970) 6 Cal.App.3d 873; *Hosford v. Bd. of Administration* (1978) 77 Cal.App.3d 854.)

Respondent Crawford represented herself.<sup>1</sup> Prior to the hearing, medical records were exchanged and extensive medical records were admitted at hearing. In addition, staff assisted respondent Crawford by providing subpoena documents so she could subpoena her doctor to testify at hearing. Respondent Crawford's treating physician, Dr. Andrea Espinosa, testified at hearing. She is a certified Family Practice Physician and also has a Master's Degree in Psychology. She testified as to her observations in treating respondent Crawford and the referral she had made.

Dr. Markovitz testified extensively and explained that respondent Crawford has been misdiagnosed and as a result not properly treated. In his opinion, she was not permanently substantially incapacitated from her duties and that with proper treatment she could perform the duties of a Psychiatric Technician.

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<sup>1</sup> The Department of Developmental Services did not appear at the hearing.

The ALJ explained respondent Crawford failed to meet her burden in that respondent Crawford explained she quit working because she was unhappy with changes in her work schedule and assignment. She further had explained that she did not wish to return to work and was happy volunteering and caring for her grandchildren.

The ALJ explained that the record does not support a finding that respondent Crawford suffers from Bipolar disorder and rather, supports a finding that she suffers from Major Depression which is treatable and not permanent.

The ALJ concluded that respondent Crawford'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.

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