

**ATTACHMENT A**  
**THE PROPOSED DECISION**

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

In the Matter of the Statement )  
Of Issues Against: ) OAH No. 2013040734  
)  
PAMELA BATTLE )  
)  
Respondent. )  
\_\_\_\_\_ )

**PROPOSED DECISION**

This matter was heard on July 3, 2013, by Administrative Law Judge Chris Ruiz (ALJ), Office of Administrative Hearings, in Orange, California.

Pamela Battle (Respondent or Appellant) was present and represented herself.

Anthony Suine, Chief, Benefit Services Division, California Public Employees' Retirement System (CalPERS) was represented by Rory J. Coffey, Senior Staff Attorney.

Oral and documentary evidence was received and argument was heard. The matter was submitted for decision on July 3, 2013.

ISSUE

On or before September 27, 2010, was Appellant substantially unable to perform her usual and customary duties as a psychiatric technician (PT) at Lanterman State Hospital?

FACTUAL FINDINGS

1. Appellant was previously employed by Lanterman State Hospital (LSH) as a PT. Her application for disability retirement benefits was filed on September 27, 2010, and was denied by CalPERS on May 4, 2011. On June 2, 2011, Appellant appealed CalPERS' denial of her application.

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2. Appellant contends that her orthopedic injuries (neck, back, knees, and wrists) and psychological injuries render her disabled.
3. Appellant is 51 years of age. She is presently employed by Independent Lifestyles Group Home where she has worked for approximately the last year and a half. She supervises four clients and makes them breakfast.
4. Appellant worked at LSH from approximately December 1997 to July 2009. Immediately prior to her last day worked, she was on modified work duty, because of a work-related injury she suffered in 2008. On her last day worked, Appellant was told that modified work was no longer available.
5. At hearing, Appellant contended that her medical condition has become worse since her application for disability retirement was filed. However, the issue at hand is whether or not she was disabled at the time she filed her application. Appellant did not establish that CalPERS' decision was incorrect.
6. Appellant contended that because her employer eliminated the modified work duty that she required, such conduct by her employer essentially "made" her become disabled because there was no job available that she could perform with her medical condition. While Appellant may have other remedies available to her under the Americans with Disabilities Act, or otherwise, her employer's conduct does not establish that she was incapacitated physically and unable to substantially perform the essential job duties of her job. The medical evidence did not establish that Appellant can no longer perform as a PT. The medical evidence overwhelmingly discussed Appellant returning to a modified job for a short period of time, and then it was expected by the medical professionals that Appellant would be able to return to her usual job as a PT. Thus, the medical evidence available at the time of Appellant's application did not establish that she was substantially unable to perform her usual and customary duties as a psychiatric technician (PT) at Lanterman State Hospital.
7. While the medical professionals' opinion(s) may be different now that Appellant cannot return to work because her employer no longer will offer modified duty, Appellant did not ask for additional time in order to obtain more current medical reports.
8. As stated above, the issue before the undersigned is whether or not Appellant was capable of performing the essential duties of her job at the time of her application.

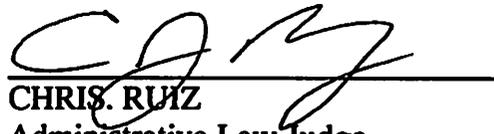
**LEGAL CONCLUSION**

1. Appellant has the burden of proof to establish that at the time of her application for disability retirement on September 27, 2010, she was incapacitated physically and unable to substantially perform the essential job duties of her job as a PT. Appellant did not meet her burden as discussed in Factual Findings 1-8.

**ORDER**

The determination of CalPERS that Appellant Pamela Battle was not substantially unable to perform her usual and customary Job at the time of her retirement is sustained. The application of Pamela Battle for disability retirement benefits, and her appeal of CalPERS' determination, is denied.

Dated: July 30, 2013.

  
CHRIS. RUIZ  
Administrative Law Judge  
Office of Administrative Hearings