

ATTACHMENT B
STAFF'S ARGUMENT

ARGUMENT TO DENY PETITION FOR RECONSIDERATION

At its August 21, 2013 meeting, the Board adopted the Proposed Decision of the Administrative Law Judge (ALJ) denying Respondent Karen Crawford's ("Respondent Crawford") application for disability retirement.

Respondent Crawford had notice and opportunity to fully present her case and did present her case. The ALJ found that Respondent Crawford failed to meet her burden of proof on appeal and that she was not substantially incapacitated from the usual and customary duties of her position as a Psychiatric Technician (PT).

The ALJ's findings were based on extensive medical records and testimony admitted at hearing, Respondent Crawford's testimony, testimony of the Independent Medical Examiner (IME) Paul Markovitz, M.D. Ph.D. (Psychiatrist), and Respondent Crawford's treating physician Dr. Espinosa (a certified family practitioner who holds a Masters Degree in Psychology).

In Respondent Crawford's Petition for Reconsideration, she states:

- She has bipolar disorder and has been hospitalized.
- Her job caused her to have anxiety and stress.
- She believes there is enough factual evidence from other professionals to prove she is permanently disabled.
- Dr. Espinosa's opinion should be used to determine she qualifies for disability retirement.
- Dr. Markovitz's opinion should be disregarded.
- She denies disliking her new job requirements.
- She disagrees she has been inadequately treated for years.
- She cannot work fulltime.

These arguments are not new. They were raised during the hearing and evidence was taken on each issue.

At hearing, Respondent Crawford testified that she worked half-time at the Porterville State Hospital. She worked three days a week with two days off. Her job changed to be working everyday which she did not like. Respondent Crawford explained she was transferred to a unit which had more impaired children as clients, she did not like the change and it made her nervous and anxious.

Respondent's treating physician, Dr. Espinosa testified extensively at hearing. The physician's reports of disability of Dr. Barnett (Psychiatrist) and Dr. Bluestein were admitted. Dr. Espinosa explained in detail Respondent Crawford's history including her hospitalization. Dr. Espinosa was present to hear the testimony of Dr. Markovitz and provided rebuttal testimony.

During the hearing, IME Paul Markovitz testified extensively about Respondent Crawford's condition. He explained that while she suffered from depression and was diagnosed as depressed, at age 17, she does not meet the criteria for "Bipolar Disorder".

Dr. Markovitz explained that Respondent Crawford denied any manic behavior which was supported by her medical records. Dr. Markovitz administered a test called the Symptom Checklist-90-R (SCL-90-R) to Respondent Crawford. He diagnosed respondent as:

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

Dr. Markovitz explained the medications Respondent Crawford has used for the last four years had not improved her condition. He explained why they did not work and explained the medications which should be tried.¹ Dr. Markovitz opined with proper medication and treatment Respondent Crawford could return to work, if she chose to.

In conclusion, Respondent Crawford could be functioning much more effectively with proper medication and treatment. However, Dr. Markovitz opined she can perform the duties of PT and did for fourteen years. The arguments Respondent Crawford raises in this Petition for Reconsideration are the same she raised and were fully litigated at the hearing. Respondent has no new grounds to support her Petition for Reconsideration.

For all of the reasons stated above, staff recommends the Board deny the Petition for Reconsideration and uphold its decision.

Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. The respondent may file a Writ Petition in Superior Court seeking to overturn the decision of the Board.

October 16, 2013



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¹. The Proposed Decision details the names of medications which, if used, might assist Respondent Crawford and resolve many of her issues within three months.