

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

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

Respondent Jennifer L. Rushlow (Respondent) was employed as a Psychiatric Technician by the Department of State Hospitals, Atascadero State Hospital (ASH). By virtue of her employment, Respondent was a state safety member of CalPERS.

Respondent submitted an application for disability retirement on the basis of a claimed psychological (post-traumatic stress disorder) condition. Staff reviewed relevant medical and psychological reports and a written copy of Respondent's job description. Andrea R. Bates, M.D., a board-certified Psychiatrist, reviewed applicable medical and psychological reports, a written job description and conducted an independent evaluation of Respondent. Dr. Bates prepared a written report, which contained her observations, findings, conclusions and ultimate opinion that Respondent was not substantially incapacitated from performing the usual and customary duties of a Psychiatric Technician at ASH. Staff denied Respondent's application for disability retirement. Respondent appealed staff's determination and a hearing was held on October 15, 2013.

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

Respondent testified at the hearing. She described her usual and customary duties as a Psychiatric Technician at ASH. The job duties require interaction with patients, including the ability to respond to violent or potentially violent situations. Respondent described being assaulted by a patient, which resulted in some physical injuries (which healed) and psychological responses or reactions (which did not fully resolve).

Respondent called her treating Psychologist, Peter Russell, Ph.D., who testified regarding his evaluation of Respondent and treatment provided to her. Dr. Russell testified that Respondent continues to experience psychological effects from the attack, including insomnia, anxiety, panic attacks and an inability to focus or concentrate. Dr. Russell stated his opinion that Respondent was/is substantially incapacitated from performing the usual and customary duties of a Psychiatric Technician at ASH.

Dr. Bates testified that Respondent did experience psychological effects from the assault. However, Dr. Bates was of the opinion that Respondent was not substantially incapacitated and could successfully return to work as a Psychiatric Technician at ASH.

After considering all of the documentary evidence and testimony from witnesses, the Administrative Law Judge (ALJ) found that there was sufficient credible medical and psychological evidence to demonstrate that Respondent was/is substantially incapacitated from performing her usual and customary duties as a Psychiatric

Technician at ASH. Accordingly, the ALJ concluded that Respondent's appeal should be granted.

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 the case, the risks of adopting the Proposed Decision are minimal. The member's application has been granted; therefore, it is unlikely the member will file an appeal.

December 18, 2013

  
for Marguerite Senboun  
RORY J. COFFEY  
Senior Staff Attorney