

ATTACHMENT A
THE PROPOSED DECISION

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

In the Matter of the Involuntary Reinstatement
from Disability Retirement of:

Case No. 2013-0468

KIMBERLY HAYNES,

OAH No. 2013061002

Respondent,

and

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION,
CALIFORNIA STATE PRISON, LOS
ANGELES COUNTY,

Respondent.

PROPOSED DECISION

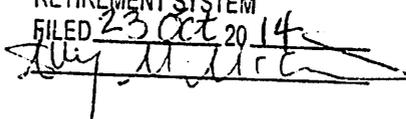
This matter was heard before Dian M. Vorters, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on September 22, 2014, in Sacramento, California.

Elizabeth Yelland, Senior Staff Counsel, represented the California Public Employees' Retirement System (CalPERS and Complainant).

Kimberly Haynes (respondent), appeared and represented herself.

There was no appearance by or on behalf of the Department of Corrections and Rehabilitation (CDCR or Department), California State Prison, Los Angeles County (Correctional Facility).

Evidence was received and the record closed on September 22, 2014.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED 23 Oct 20 14


ISSUE

Is respondent permanently disabled or substantially incapacitated from performance of her duties as a Medical Technical Assistant (MTA) at a Correctional Facility, on the basis of an orthopedic (neck, back, bilateral hip) condition?

FACTUAL FINDINGS

Respondent's Employment History

1. Respondent is currently 46 years of age. She began working for CDCR in 1994. Her last position with CDCR was as an MTA. In 2000 and 2003, she sustained injury to her back on two occasions. Respondent filed her application for disability retirement benefits on June 19, 2000. She worked until the end of 2003 or beginning of 2004, until she was medically retired on the basis of industrial disability.

Duties of a Medical Technical Assistant (Correctional Facility)

2. As set forth in the MTA Duty Statement and Job Specifications, an MTA at the Correctional Facility performs tasks involved in the medical and/or psychiatric care of inmates, youthful offenders, residents, or patients, maintains order, and supervises the conduct of inmates. Under supervision of a Senior MTA, the MTA is responsible for assisting medical staff with medical exams; taking and recording medical histories, including height, weight, color, sense, and auditory acuity; collects specimens for urinalysis; assists in processing the inmate sick call by addressing superficial injuries; participates under physician supervision in simple therapeutic measures; administers first aid; responds to emergencies as required; and other duties as specified in post orders for specific areas and watches.

3. Duties as a percentage of total MTA assignment are broken down in the Duty Statement as follows:

- a. Assist with emergency medical and routine sick call triage, administer controlled substances/medications, perform routine nursing care, assist physicians with emergency medical/trauma care, collect specimens and assist with routine physical examinations, execute medical orders from physician or supervising registered nurse, (40 percent of the time);
- b. Assist in maintaining order, instructing inmate workers in nursing/housekeeping procedures, conduct sanitation inspections, escort inmates, perform routine custody inspections of assigned areas, (30 percent of the time);
- c. Collect specimens and assist with routine physical examinations, (15 percent of the time);

- d. Conduct inventories of controlled substances, equipment, instruments, needles and syringes, and report violations, (10 percent of the time);
- e. Attend service training, (5 percent of the time).

4. Complainant did not submit evidence of the published physical requirements of the MTA position.¹ According to the Class Specifications, the position requires an ability to communicate effectively, perform nursing techniques, prepare reports, operate physical therapy equipment, exercise tact and patience, demonstrate a sympathetic and objective understanding of persons under restraint, leadership ability, normal or corrected hearing, sound physical condition, strength, endurance, and agility, and be free from use of illicit drugs.

5. On June 19, 2000, respondent filed her Application for Industrial Disability Retirement (Application) with CalPERS. In her Application, respondent reported an injury date of May 17, 2000. She identified "back injury" as her specific disability. This injury occurred when she was "lifting a patient while on a gurney and as I and another MTA were lifting I lost my balance, took three steps back and then had to continue upward to lock the gurney." Respondent stated she was off work for approximately 10 months. She filed a worker's compensation claim (No. EN123382) and was treated by Dr. Greenspan, in Sherman Oaks.

6. In 2003, respondent suffered a second work-related injury while attempting to "roll" a quadriplegic patient. She was reportedly taken off work for over one year by Dr. Greenspan.

7. In or before May 2003, Mark Nystrom, M.D., performed an independent medical examination (IME) on respondent. He prepared an IME report dated May 12, 2003. The 2003 IME report of Dr. Nystrom was not submitted in evidence. However, Daniel D'Amico, M.D., who conducted a second IME in September 2012, reviewed Dr. Nystrom's IME. Dr. D'Amico summarized Dr. Nystrom's findings in his 2012 IME report. Dr. Nystrom reportedly found respondent to be disabled since March 5, 2003. CalPERS subsequently granted respondent Industrial Disability Retirement (IDR) on the basis of her work-related injuries. Respondent has not worked since taking disability retirement in early 2004. Respondent's husband was transferred by the Navy to Virginia in 2004, and the family relocated out-of-state.

¹ Physical requirements of the job outline the frequency with which an incumbent is required to lift, carry, push, pull, move, or tolerate exposure to noise, light, or other bio-hazards.

2001 Surveillance Video of Respondent's Activities

8. Chad Sandry has been an investigator with CalPERS for over three years. As a supervising special investigator, his duties include supervising field investigators and assisting on surveillance of claimants who have applied for disability benefits. Mr. Sandry explained that respondent's case was randomly selected for special review due to her being under the age of 50 while on IDR. He stated that a panel looks at all medical documents, restrictions, and tapes. Investigator Guy Schneider was assigned to document respondent's activities.² Mr. Schneider compiled the videotape, saved it to DVD format, and wrote a report of surveillance findings dated November 30, 2001.

9. The surveillance report stated that respondent was "currently precluded from heavy lifting, bending, stooping or lifting, and cannot play softball, workout, ski or bike ride." Approximately 15 hours, 30 minutes of surveillance was conducted in October 2001. Surveillance video taken on October 22, 2001, showed respondent pushing a grocery basket up to a red pick-up truck in a parking lot. A nine-year-old girl got into the back of the truck and helped respondent to place groceries into the back of the truck bed. Respondent is seen handing small items to the child one at a time. Respondent got into the truck to drive away. Respondent was later videoed in the driveway of a house. An 11-year-old boy came out of the home as did a man. The boy got into the truck bed and helped removed items from the truck. Both children and the man helped carry items into the house through the garage and front door. Respondent was seen reaching into the back of the truck with both hands and carrying small items into the house.

10. Other observed activities involved respondent doing light errands such as driving to a chiropractic office, church, and the veterinarian. Mr. Sandry characterized respondent as "fairly active" but conceded that respondent did not do anything on the video that was "contradictory to her preclusions." It is noted that this 2001 video surveillance was known to CalPERS when respondent was granted IDR in 2004. Due to the timing and content of the surveillance video, it is given little evidentiary weight in this second disability determination.

2011 Reexamination

11. By letter dated July 25, 2011, respondent was notified that her case was being reexamined by CalPERS. She was instructed to provide a signed Authorization to Disclose Protected Health Information (form BSD-35), names and addresses of all physicians treating her within the last year for the disabling conditions, and the name of her current employer. She was also informed that a second IME might be arranged.

² Mr. Schneider has since retired. Mr. Sandry supervised Mr. Schneider and testified at hearing.

12. CalPERS did arrange for respondent to undergo another IME in September 2012. Respondent flew back to California to attend an IME with Daniel M. D'Amico, M.D., on September 11, 2012. Dr. D'Amico has been licensed in California since 1958 and is board certified in orthopaedic surgery. He practices in Sacramento. Dr. D'Amico prepared an IME report dated September 12, 2012.

13. It is noted that Dr. D'Amico's report indicates that respondent is a registered nurse with a "21-year-old and a four-year-old child." Respondent was a licensed vocational nurse through 2008 when her California license expired. She has three children, a 24-year-old son, 22-year-old daughter, and a 10-year-old son. Dr. D'Amico stated at hearing that he did not know where he got the misinformation and suggested it was a "typographical error."

14. Dr. D'Amico obtained a medical history from respondent, reviewed medical records, watched the surveillance video, and administered a physical examination. He testified about his findings and IME report.

15. Respondent reported to Dr. D'Amico a history of depression, injuries to the cervical and thoracic spine at work, severe headaches periodically, and neck pain. She complained of hip pain in the low back and trochanteric areas and tightness in her hands. Respondent received chiropractic treatment for her neck pain which was always present. She denied radicular-type pain into the upper extremities other than occasional pain in the trapezius and left shoulder, diffuse into the left arm.

16. Respondent's husband was present during the physical examination. Notable findings were: Good range of motion (ROM) in lower extremity and low back with fingers to ankle motion. Extension was "a little bit painful in the low back with pain radiating from the midline to the right and left over the iliac crests." Dr. D'Amico stated that respondent did very well for her size, age, configuration, and level of athleticism. In the supine position she had normal ROM of the knees and ankles. Stance and gait were normal. Dr. D'Amico noted no pain in the sacroiliac joints upon touch. Respondent had normal motion in her knees bilaterally. Ankle motion was complete and pain free. Strength testing revealed: "quadriceps 5/5, hamstrings 5/5, ankle extensors 5/5, plantar flexor muscles or the calf 5/5."

17. On examination of the neck while seated, respondent had tenderness turning to the left at 50 degrees and to the right at 60 plus degrees. She had some "tightness in the neck with extension, less so with flexion." No muscle spasms were noted. There were no impingement findings of either right or left shoulder as she abducted her arm across her chest. Findings were "negative and she had full strength." Reflexes in the upper extremities were "fairly symmetrical." Sensation to soft touch and pinwheel testing was intact over the upper extremities. There was no gross sensory loss other than on the left side where there may have been a bit in the dorsolateral aspect of the left forearm without weakness of the biceps or triceps and without weakness of grip.

18. Dr. D'Amico reviewed respondent's medical records from April 2000 to January 2011.

a. The first report of injury, an April 2000 evaluation, revealed a diagnosis of thoracic sprain and back sprain/strain. At five feet, three and one-half inches tall, and weighing 130 pounds, she had the ability to lift 20 pounds or less due to pain. Objective findings were pain in spinous process, C7-T1 paravertebral muscle tenderness and spasm with right and left flexion. X-rays of the lumbar spine were normal. X-rays of the cervical spine revealed narrowing at C5-6. An MRI of the cervical spine supported a diagnosis of posterior osteophyte ridging at C5-6 and posterior osteophyte ridging at C6-7. There was no evidence of spinal stenosis or neural foraminal stenosis. An EMG and nerve velocity study in October 2000 showed no evidence of left cervical radiculopathy, brachial plexopathy, or median or ulnar neuropathy, meaning the EMG and nerve velocity were normal.

b. Dr. D'Amico reviewed medical records of Mark Greenspan M.D., Thomas Fell M.D., and Edward Carden, M.D., from 2001. Physical findings and diagnosis were thoracic sprain/strain with no objective findings and normal MRI. "No objective diagnosis [was] noted other than subjective complaints and precluding heavy lifting due to subjective complaint on the part of the patient." Dr. Lustig, M.D., performed a psychiatric evaluation and diagnosed respondent with "Psychiatric injury of significant Anxiety Disorder Mixed with Depression, arising out of and caused by her employment."

c. On February 24, 2003, MRIs of the cervical spine and thoracic spine revealed mild degenerative changes; no significant findings otherwise. Respondent's second report of injury occurred on March 5, 2003. Dr. Nystrom prepared an IME report dated May 12, 2003. Dr. Nystrom noted two incidents when respondent injured her spine. Her MRIs, EMGs, and nerve conduction studies were all negative. After a history and physical exam, Dr. Nystrom concluded that respondent was "not disabled from performing her duties as an [MTA]." He nevertheless apparently concluded: "I think that she is substantially incapacitated." Permanent disability was caused by her employment. Drs. Nystrom and Greenspan concluded that respondent suffered a "cervical spine injury" and was not a "surgical candidate" because in their opinions, surgery will "more likely than not, fail to cure her many subjectives if she had surgery."

d. Respondent is currently receiving treatment for her cervical spine complaints from Dr. Kerner, at Virginia Orthopaedic and Spine Specialists (Virginia Orthopedic). The initial evaluation by Theresa G. Jackson, M.D., revealed degenerative disc disease (DDD) at C4-5 and C5-6, multilevel DDD of the cervical spine. Respondent was receiving conservative treatment including pain medication. A subsequent MRI revealed moderate left neural foraminal narrowing of the C5-6. Respondent received chiropractic treatment in January 2011.

19. Dr. D'Amico's impressions were that respondent presented with: 1) degenerative cervical disc disease, two levels (C4-5 and C5-6), 2) rule out isoimmune disease process, and 3) somatoform pain syndrome. At hearing, Dr. D'Amico provided a diagnosis of "soft tissue injury" based on respondent's previous complaints. He stated that respondent had "classic somatoform pain," meaning she was declared disabled from a psychological perspective, but no orthopedic surgeon wants to make a diagnosis with a

normal EMG and MRI. Somatoform pain often comes with depression and anxiety. In Dr. D'Amico's opinion, respondent was "not malingering," because her issue is "not conscious." Instead, it is a "neuropsychological condition" wherein she thinks she is disabled because she has pain.

20. Respondent's x-rays showed narrowing of the anterior/posterior area of the spinal cord. Records indicated a three to four millimeter disc osteophyte complex which Dr. D'Amico stated was a "normal disc degenerative condition of the neck." He further explained that degenerative changes are caused by a composite of genetics first, followed by wear and tear (using your body), then aggravated by injury. In Dr. D'Amico's opinion, respondent's DDD was not disabling enough based on conditions of the neck and back to render respondent disabled from substantial performance of her job duties.

21. In response to specific questions posited by CalPERS regarding respondent's ability to work, Dr. D'Amico's professional opinions are follows:

- a. *Are there specific duties member is unable to perform?* No. It is my professional opinion, that there are no specific duties that [respondent] is unable to perform because of a physical condition.
- b. *Is member presently substantially incapacitated for performance of her usual duties?* No. In my professional opinion, [respondent] is not presently substantially incapacitated to perform her duties.
- c. *If incapacitated, is the incapacity permanent or temporary?* There is no incapacity.
- d. *Did member cooperate with examination or did you detect exaggeration?* Yes. [Respondent] cooperated with the examination.

22. From the medical record, Dr. D'Amico recognized differences of opinion as to whether respondent was physically disabled. Dr. D'Amico stated:

...the industrial-injury cases have been settled, so they are not an issue at the present time. Based on the recent records that I reviewed from the Virginia Orthopaedic Group, as indicated by Theresa G. Jackson, [respondent] is not disabled, significantly, because of the diagnosis of degenerative cervical disc disease, and also there are no indications of neurologic deficits in the upper extremities, such as radiculitis or radiculopathy.

Dr. D'Amico noted there may be significant pain caused by the progressive DDD indicating that respondent may be a candidate for decompressive surgery.

23. Subsequent to issuance of his September 2012 IME report, CalPERS sent additional records to Dr. D'Amico on three separate occasions. As such, Dr. D'Amico generated three supplemental reports as follows:

a. October 19, 2012 Supplemental Report – Dr. D'Amico received and reviewed a consultation report from Mark B. Kerner, M.D., Virginia Orthopedic, dated March 28, 2012. Dr. Kerner's report is not in evidence. Dr. D'Amico stated in his supplemental report that he disagreed with Dr. Kerner's findings and that Dr. Kerner may have "tended toward recommending surgery." Dr. D'Amico reiterated that respondent did not have significant pain. It was "more sporadic, diffuse, and not specific." He again recognized she had DDD, but felt the pain was not disabling and could be controlled with exercise and medication.

b. January 21, 2014 Supplemental Report – Dr. D'Amico received and reviewed a letter in support of disability from Karen Rush, M.D., dated May 30, 2013; an MRI of the cervical spine dated June 8, 2013; an electrophysiology report dated July 1, 2013; and a consultation report of Dr. Kerner, Virginia Orthopedic. These records were not submitted in evidence. Dr. D'Amico stated in his supplemental report that "I are [*sic*] in essential agreement. Objective findings are not significant. There is no change in the opinions I previously expressed."

c. July 28, 2014 Supplemental Report – Dr. D'Amico received and reviewed a consultation report (October 31, 2013) and a follow-up report (February 13, 2014) of Tina Mahajan, M.D.; a follow-up report for fibromyalgia and joint pain dated December 19, 2013; and a history and physical from Dr. Nishidh Barot (evaluation from a sleep center). These records were not submitted in evidence. Dr. D'Amico stated in his supplemental report that the new information did not change his opinion that respondent was "not substantially incapacitated for performing her usual work of a nurse in the prison system on an orthopedic basis" as previously indicated.

24. Dr. D'Amico stated that respondent did not appear to be depressed at the IME. He described her as cooperative and stated that she tried to answer questions. She mentioned that she had difficulty with mood, emotion, and behavior. Dr. D'Amico added the caveat that he was not a psychologist. Dr. D'Amico did not offer an opinion on lifting requirements for the job. It is noted that lifting requirements for an MTA/Correctional Facility were not included in the job duty statement or specifications. Dr. D'Amico was asked whether respondent could perform a job that required her to lift 50 pounds on a daily basis. Dr. D'Amico stated that the question he must opine on is not whether an employee cannot perform a task because it hurts, but instead, whether an employee has the ability to perform a task, possibly with some modification. Dr. D'Amico's experience in a hospital setting was that a nurse would never be required to lift a 200 pound male with assistance of another assistant. He did not know if respondent could perform this lifting task.

Respondent's testimony

25. Respondent and her husband testified. Respondent provided a history of complaint commiserate with her prior reports. She was twice injured at work in 2000 and 2003. Respondent stated that the job in the prison was not a typical nursing job. Hospital nurses did not run into alarms with a 12-pound belt on their waist. She stated that they wore gear to deal with patients.

26. Respondent spoke of her earlier IME with Dr. Nystrom who found her disabled for performance of her job duties. She stated she was told she could no longer lift and she needed to find a new career. The State offered her retraining which she started. During that time, her husband got orders from the Navy to move to Virginia. She stated that "every job" says you have to be able to lift 50 pounds. Knowing this, she did not transfer her nursing license to Virginia.

27. Respondent's primary care doctor is Karen Rush, M.D. Dr. Rush diagnosed respondent with fibromyalgia, irritable bowel, depression, anxiety, and gastric reflux. Dr. Rush referred respondent to Dr. Mark Kerner, her spine specialist in Virginia. Dr. Kerner offered her surgery but did not tell her she would be pain-free. Respondent stated that for 10 years she has been dealing with severe neck and left arm pain. She loves nursing and has tried to adjust her life. She has always been a "worker." She has depression and lost 25 pounds to help her feel better. She walks on a tread mill, bicycles with care, and uses two pound weights. She limits her travel by car to essential trips. To relieve pain she applies pillows, heating pads, ice packs, and a Tens Unit she received from a chiropractor. She also rests and takes medications. Currently she takes Tramadol (anti-inflammatory), Nexium (indigestion), Wellbutrin (pain/depression/anxiety), Cymbalta (pain), Gabapentin (pain), Tylenol #4 with Codeine (pain), and Ambien (sleep).

28. Herschel Haynes is respondent's husband. He is a former Navy Seal of 16 years in San Diego. When he returned from Iraq in 2004, he got transfer orders to a station in Virginia. Mr. Haynes stated that respondent used to be very active and played in two baseball leagues. After her second injury in 2003, the quality of her life changed dramatically. He watched the video of respondent and his children, then ages 12 (son) and 10 (daughter). He stated that his wife was strained trying to keep up as a housewife and mother because he was not around. He was on duty and training with his Seal Team Monday through Friday when they lived in Southern California. In the last 10 years, her condition has worsened.

29. Mr. Haynes stated that he understood that pain is subjective. However, he shared that respondent cannot drive long distances. He comes home daily at lunch and at night to check on her as her physical state can change in a matter of hours. At the IME with Dr. D'Amico, she was sick when they walked in, passive, and not feeling well. Two days later, she was diagnosed with strep throat. He felt Dr. D'Amico was not attentive to the examination and was more interested in Mr. Haynes's career as a Navy Seal.

Assessment of Respondent's Disability

30. It is uncontroverted that respondent suffered two injuries in 2000 and 2003 while on the job. She received worker's compensation and physical therapy. She stopped working in 2004 and moved with her husband and two children to Virginia. In approximately 2004, she had another child who is now 10 years of age. Respondent is currently 46 year of age. She suffers from DDD and receives medication and treatment from a spine specialist in Virginia. She also reportedly suffers from depression and anxiety and receives treatment for this and other physical complaints from her primary care physician.

31. There is no confirmation of the lifting requirements imposed on MTAs at a Correctional Facility. Hence, there was no evidence on how the job could be modified to accommodate respondent in that respect. Respondent stated that she was on modified duty until she took disability leave of the MTA position. She is no longer licensed as an LVN. The job specifications require either a nursing license (LVN or RN) or 12-months experience rendering patient care in the armed forces or public health service with six months to obtain an LVN or RN license. Regardless, respondent now lives out-of-state, stated no intention of returning to California, and experiences symptoms which she finds disabling.

32. Respondent was a state safety member in CalPERS. The minimum age of voluntary retirement is age 50 for respondent's membership class. Respondent was granted IDR in 2004 at the age of 36. Hence, she was under the minimum age for voluntary retirement and subject to medical examination to determine whether she is still incapacitated. (Gov. Code, §§ 21192, 21193.)

33. Based on all of the evidence presented, CalPERS established that respondent was not substantially incapacitated on the basis of an orthopedic condition of the neck, back, and hips, such that it would interfere with respondent's usual activities as a Medical Technical Assistant at a State Correctional Facility. In making this determination, the IME opinion of Dr. D'Amico was persuasive that respondent is not substantially incapacitated for performing her usual work of a nurse in the prison system on an orthopedic basis. Respondent did not submit competent medical evidence of impairment to contravene CalPERS' evidence.

LEGAL CONCLUSIONS

1. By reason of her employment, respondent is a state safety member of CalPERS and eligible for disability retirement under Government Code section 21151, subdivision (a).

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 and is eligible to retire for disability..." (Gov. Code, § 21156, subd. (a)(1).) 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, ...on the basis of competent medical opinion.

3. The burden of proof flows from the type of process initiated and lies with the party making the charges. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 582.) Respondent has been receiving industrial disability retirement benefits since approximately 2003. CalPERS filed this Accusation to force her involuntary reinstatement from disability retirement. As such, the burden rests with CalPERS to prove its contentions based on competent medical evidence by a preponderance of the evidence.

4. The Board “may require any recipient of a disability retirement allowance under the minimum age for voluntary retirement for service applicable to members of his or her class to undergo medical examination, and upon his or her application for reinstatement, shall cause a medical examination to be made of the recipient who is at least six months less than the age of compulsory retirement for service applicable to members of the class or category in which it is proposed to employ him or her.” (Gov. Code, § 21192.)

5. “If the determination pursuant to Section 21192 is that the recipient is not so incapacitated for duty in the position held when retired for disability or in a position in the same classification or in the position with regard to which he or she has applied for reinstatement and his or her employer offers to reinstate that employee, his or her disability retirement allowance shall be canceled immediately, and he or she shall become a member of this system. If the recipient was an employee of the state or of the university and is so determined to be not incapacitated for duty in the position held when retired for disability or in a position in the same class, he or she shall be reinstated, at his or her option, to that position...” (Gov. Code, § 21193.)

6. The role of disability retirement is to address the needs of employees who are unable to work because of a medical disability. (Gov. Code, § 21153.) “[W]hile termination of an unwilling employee for cause results in a complete severance of the employer-employee relationship [citation], disability retirement laws contemplate the potential reinstatement of that relationship if the employee recovers and no longer is disabled. Until an employee on disability retirement reaches the age of voluntary retirement, an employer may require the employee to undergo a medical examination to determine whether the disability continues. (Gov. Code, § 21192.) And an employee on disability retirement may apply for reinstatement on the ground of recovery. (*Ibid.*) If an employee on disability retirement is found not to be disabled any longer, the employer may reinstate the employee, and his disability allowance terminates. (Gov. Code, § 21193.)” (*Haywood v. American Fire Protection Dist.* (1998) 67 Cal.App.4th 1292, 1305.)

7. CalPERS presented competent medical evidence that respondent is no longer substantially disabled for performance of her duties as a Medical Technical Assistant at a Correctional Facility. Dr. D’Amico considered the duties set forth in the duty statement and

specifications for MTA, relevant medical records, and his own independent medical examination findings. In his professional opinion as an orthopaedic surgeon, respondent is not substantially incapacitated for performance of her duties as an MTA, based on orthopaedic conditions. Respondent did not submit competent medical evidence of impairment to contravene this evidence.

ORDER

Respondent Kimberly Haynes is not substantially disabled for performance of her duties as a Medical Technical Assistant at a Correctional Facility. Respondent's appeal of CalPERS' determination is DENIED. Respondent shall be given an opportunity to be reinstated to her former usual job duties as a CDCR Medical Technical Assistant.

DATED: October 21, 2014



DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings