

ATTACHMENT A

RESPONDENT'S PETITION FOR RECONSIDERATION

ATTENTION CHEREE SWEDENSKY, ASSISTANT TO THE BOARD

08/28/2019

Petition For Reconsideration

Daisy S. Chisholm



CALPERS #



AUG 29 2019

CALPERS Executive Office

Cheree Swedensky, Assistant to the Board

P.O. Box 942701

Sacramento CA 94229-2701

Subject: 'Petition For Reconsideration' /Of Application for Industrial Disability Retirement

This letter is to inform the Board of Administration Of CALPERS, that my Respondent Written Argument against the proposed decision was filed and received in CALPERS office San Bernardino on August 06, 2019 as was instructed to file before August 07, 2019. I informed and gave the representative the address of CALPERS Executive Office Sacramento, CA 94229-2701 attention Cheree Swedensky. That it needed to be in their office by August 7, the next day. The representative assured me it would be overnight that's how they always do. Enclosed you will find a copy of the document. However I received a copy of CALPERS proposed Decision on Saturday August 24, 2019 dated August 21,2019 with an attachment 'C' stated Respondent Argument (None Submitted) I then received another document on August 28,2019 dated August 21, 2019 which stated Board Of Administration CALPERS 'Resolved' also stated it was mailed on August 22,2019 any Petition for Reconsideration must be received by CALPERS by August 30, 2019. I believe this is again unfair to me that my written argument was not submitted to the board before a decision was made. I am requesting A Petition For Reconsideration, or a higher

court hearing or a New Administration hearing with a new administrative Law Judge. I believe I was treated unfair in a number of ways by administrative judge Kimberly J. Belvedere for example she refer to me as a quadriplegic, also knowing that DR. Kolensnik committed perjury under oat stated his malpractice case was dismiss. His case was not dismiss check it out on the web. As a previous juror I along with other juror's was instructed by a high court judge that a person who committed perjury in one part of their testimony the other parts must not be used to make our decision. That exactly what DR. Kolesnik did. I am asking for a fair hearing.

Sincerely

Daisy S. Chisholm

Daisy S. Chisholm



**IN THE MATTER OF THE APPLICATION FOR INDUSTRIAL
DISABILITY**

RECEIVED
AUG 06 2019
CalPERS / CSOD
SBRO

RETIREMENT OF:

DAISY S. CHISHOLM, Respondent

And

DEPARTMENT OF STATE HOSPITALS – STOCKTON,

Respondent

Agency Case No. 2017-0909

OAH No. 2017110952

WRITTEN ARGUMENT AGAINST THE PROPOSED DECISION

Daisy S. Chisholm's oral argument against the Proposed Decision made by Administrative Law Judge Kimberly J. Belvedere on June 10, 2019 in the matter for industrial Disability Retirement of Daisy S. Chisholm, Respondent, and Department Of State Hospitals – Stockton, Respondent.

The Proposed Decision report OAH No. 2017110952 should be dismissed based on the fact that not one (1) of Daisy S. Chisholm's ("Respondent") medical providers were present to provide to the hearing the medical and psychological damages Respondent suffered and continues to suffer as of the date of this argument.

ISSUE:

Complete and competent medical evidence was not presented to establish that Daisy was substantially incapacitated from performing the usual and customary duties as a psychiatric technician.

The only doctor which testified during the hearing was Dr. Robert J. Kolesnik, ("Dr. Kolesnik") Calper's Doctor. Although he did examine the Respondent on February 2, 2017 treat the Respondent for injuries suffered on July 31, 2014. Respondent while getting the patient's lunch from a refrigeration unit, another staff pushed a metal cart into the Respondent causing Respondent to fall and land on her right shoulder and head. As a result of this specific incident Respondent suffered constant sharp pain, limited range of motion, active shoulder motion.

Dr. Kolesnik was not fully knowledgeable of the Respondent's damage during the hearing and had to request to look at medical documents to refresh his memory. Dr. Kolesnik had not seen the Respondent in over 2 ½ years prior to the hearing. The hearing provided a long list of Dr. Robert J. Kolesnik accomplishments. However, the fact that Dr. Kolesnik had been suspended from July 9, 2009-July 14, 2010, the suspension was stayed, and he had probation through July 14, 2010. Dr. Kolesnik's actual suspension was from July 25, 2009 through August 24, 2009. Dr. Kolesnik was placed on suspension for causing Autism by vaccinations containing mercury. Most doctors should have their licenses revoked for causing autism, which causes loss of ability to read and write, loss of ability to speak and make eye contact, plus numerous other disorders caused by mercury in

vaccination. A court malpractice judgment was obtained in this matter. The issue as to whether Dr. Kolesnik's competency to determine the Respondent's damages, both physical and mental should have been an issue, it was not. Although Dr. Kolesnik may be an accomplished doctor academically and in his specific practice of medicine, his evaluation of the Respondent's medical history was mostly viewed through prior medical records. Dr. Kolesnik met with the Respondent on February 2, 2017, as stated in his Initial Orthopedic Independent Medical Evaluation:

Face-to-Face with patient: 0.75 hour

Review of the records: 2.50 hours

Prep/review of report: 1.50 hours

Dr. Kolesnik did not treat the Respondent.

SUMMARY:

The burden of proof is on the Respondent. However, the hearing relied only on the 1- time medical examination of Dr. Kolesnik and his review of her prior medical history for a total of 4.75 hours. This was adequate evaluation or information for the administrative judge to make a proposed decision.

For actual physical treatment for the job-related injuries suffered by Respondent as a result of the July 31, 2014 injuries, she was seen by the following Doctors:

7/31/2014 St Joseph's Medical Center of Stockton
Diagnoses: Bruised/discolored area, Lower left leg, Cut/Laceration/Slash front
 Left leg, Reddened Area left side of Head, Swollen area left side
 and rear of head

From Thursday, July 31, 2014 through on or about Monday, August 4, 2014. Respondent tried to work. Respondent was in severe pain.

9/17/2014-10/21/14 Larsen And Dunncliff PT, referred by Dr. Co.

October 23, 2014, Respondent was in severe pain, stopped working and went to the Program Director and he had a staff member call an ambulance.

10/23/2014 Taken to St Joseph's Medical Center of Stockton
 By American Medical Response Ambulance
 From work.

10/24/2014 Co Occupational Medical Partners
 Dr. Johnston Co, MD - Under Dr. Co Care
Diagnoses: Head Contusion, Left Calf Contusion, Lumbar Strain 10/24/14-10/27/14
 Off Work - Referral Psych Eval

10/27/2014 Co Occupational Medical Partners
 Dr. Johnston Co. MD - Under Dr. Co Care
Diagnoses: Head Contusion, Left Calf Contusion, Lumbar Strain 10/27/14-11/3/2014
 Off Work

11/03/2014 Co Occupational Medical Partners
Dr. Johnston Co. MD - Under Dr. Co Care
Diagnoses: Head Contusion, Left Calf Contusion, Lumbar Strain 11/03/-11/10/2014
Off Work

11/10/2014 Co Occupational Medical Partners
Dr. Johnston Co MD - Under Dr. Co Care
Diagnoses: Head Contusion, Left Calf Contusion, Lumbar Strain 11/10-11/17/2014
Off Work

11/17/2014 Co Occupational Medical Partners
Dr. Johnston Co MD - Under Dr. Co Care
Diagnoses: Head Contusion, Left Calf Contusion, Lumbar Strain 11/17-11/24/2014
Off Work

10/27/14 Co Occupational Medical Partners
Under Dr. Co Care
Diagnoses: Stress 10/27/2014-11/03/14
Off Work

11/03/2014 Co Occupational Medical Partners
Under Dr. Co Care
Diagnoses: Off Work 11/03/14-11/10/2014

10/29/2014 Robert E. Martin, MD-Diagnostic Interview Code 309.24
Psychotherapy, prescriptions

11/19/14 Robert E. Martin, MD- Diagnostic Interview Code 309.24
Psychotherapy, prescription Under Dr. Martin Care

Diagnoses: Severely Depressed And hurt -Unable to Work

12/22/2014 Robert E. Martin, MD-Diagnostic Interview
Psychotherapy, prescriptions- Under Dr. Martin Care
Diagnoses: Unable to Work

1/26/15 Robert E. Martin, MD,
Under Dr. Martin Care
Re-evaluated within 6 weeks at doctor
In Southern California
Diagnoses: Unable to Work

2/16/2015 Max H. Matos, MD, Southland Spine
& Rehabilitation
Diagnoses: Cervical spine strain Right shoulder strain and impingement and
Mild frozen shoulder Right wrist strain and De Quervain
Contributing factors:
New Industrial injury on 7/31/2024 resulting in increased cervical pain
And right shoulder pain; headaches with cognitive problems, increased
Preexisting low back pain. Recommendations: orthopedic

Specialist for consideration of surgery for the right shoulder, physical Therapy.

6/5/2015 Dr. Rolando Martinez D.C., Southland Spine and Rehabilitation Medical Center, based on his testing to work at this time. Unable to Return
And evaluation,

9/12/2016 Dr. Max Matos Physician's Report on Disability
Diagnosis: Cervical Spine Multi-Level disc protrusions radiculitis tenderness, decreased range of motion, limited lift, push, pull to 7 lbs, limited overhead work, right shoulder rotator cuff tear, tenderness, decreased range of motion.

Member Capacity:

Member currently, substantially incapacitated from performance of the usual duties of the position for their current employment. Incapacity will be permanent. The job duty statement/job description was reviewed to make the medical opinion. Respondent's physical requirements of position/occupation title form were reviewed to make the medical opinion.

11/2/2016 Jack Tanenbaum LCSW Out-Patient Behavior Health
Counseling – Stress

9/5/2018 Dr. James Matiko
Diagnoses:

Repair of full-thickness right supraspinatus and infraspinatus tendon. S/P right glenohumeral arthroscopy and subacromial arthroscopy, longhead of biceps tenotomy. Respondent, currently, substantially incapacitated from performance of the usual duties of the position for their current employer. Patient is limited to no above the shoulder repetitive activity, no pushing, pulling or lifting greater than 5 pounds. Will be incapacity permanently. Dr. Matiko performed surgery on right shoulder arthroscopy, with possible rotator cuff repair, biceps tenotomy versus tenodesis, subacromial decompression, distal clavicle excision. February 20, 2018.

Dr. Matos prepared a declaration for the June 10, 2019 hearing, after completely going over the Respondent's medical history and injuries received while an employee of the California Department of State Hospitals, he concluded that due to all the injuries sustained over the time of her employment that Respondent is unable to perform the physical requirements of her job as a Psychiatric Technician. He further states that he concluded two Physician's Reports on Disability on May 14, 2015, and September 12, 2016, in which he concluded that the Respondent was substantially incapacitated based on her multiple orthopedic injuries which were further aggravated by her cognitive and psychological symptomatology. Respondent is substantially incapacitated from the performance of the usual duties of her position for longer than 12 months.

RESPONDENT'S BURDEN OF PROOF HAS BEEN MET.

RESPONDENT'S TESTIMONY

As stated above regarding all the physical and mental treatment this Respondent has endured during her years of employment with the Department of State Hospitals, mental facilities, Lanterman, Patton, and the State Hospital at Stockton, which Respondent's duties required her to treat prisoners,

her duties at this hospital far exceeded the duties of the other two State Hospitals. Respondent had additional duties which exceeded the State of California Duty Statement which Dr. Kolesnik made reference to in his testimony at the hearing on June 10, 2019. Respondent was required to physically "take down" combative patients/inmates; do cell extraction of self-destructive patient/inmates; do 5 points restraint on combative and self-destructive patients/inmates, do physical restraint on patient/inmates ensure Doctor's orders for blood drawn and hypodermic injections are done properly. Do Search and Pat-Down of patient/inmate cells. The duties at Stockton far exceeded all duties she had performed as an employee of the California Department of State Hospitals.

When the Respondent, during her testimony requested to review her records, the administrative judge denied ("asking Respondent if she was Quadriplegic") Respondent the same right that the administrative judge had allowed Dr. Kolesnik to do "refresh his memory." The Respondent had a head Contusion, had been ejected from her place of employment, had been denied her rightful disability retirement, and worked for the State of California diligently from April 1993 until on November 17, 2014 she was wrongfully escorted and/or separated from the State Hospital at Stockton on October 23, 2014.

LEGAL ANALYSIS

Under California Government Code Section 21151, subdivision (a) provides: "Any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, regardless of age or amount of service." The PERL defines "disability" and "incapacity for performance of duty" to mean "disability of permanent or extended and uncertain duration, as determined by the board... on the basis of competent medical opinion." (20026.)

When the application for service retirement pending industrial Disability Retirement (IDR) was filed by the Respondent on or about My 1, 2015, CALPERS commenced a battery of testing and doctors' appointments. One of the first was with Dr. Kolesnik who was a doctor working for CALPERS and had not seen the Respondent in over 2.5 years and merely met with her for 0.75 hours, Review of the records for 2.50 hours (old records) and then was allegedly competent in Respondent's medical condition and gave a Prep/review of report on paper for 1.50 hours. The Respondent was seen for the treatment of the injuries sustained on July 31, 2014 by five medical doctors, 2 physical therapy facilities, 1 Psychotherapy, and one LCSW. The requirements of the Respondent's job were attached to Dr. Kolesnik's report. Dr. Kolesnik determined that Respondent could perform her duties. Four (4) medical doctors determined different. These medical doctors treated the Respondent immediately after her injuries on July 31, 2014. Dr. Kolesnik had not seen The Respondent in over 2.5 years. During the June 10, 2019 hearing, not one of the Respondent's doctors who treated her testified or were subpoenaed. There were no medical diagnoses given that had determined that the Respondent was substantially incapacitated from the performance of the usual duties of her position. Yet as stated above, there are two doctors that concluded that the Respondent was substantially incapacitated from the performance of the usual duties of her positions, Dr. James Matiko, and Dr. Max Matos. Dr. Johnston Co, took off from work from November 3, 2014 through November 24, 2014, Dr. Martin took her off work from November 19, 2014 - indefinite. Dr. Rolando Martinez D.C. determined that Respondent was unable to work. Dr. Matiko performed surgery on February 20, 2018. In a sworn declaration, Dr. Matos found Respondent is substantially incapacitated from the performance of the usual duties of her position for longer than 12 months. During the Office of Administrative Hearing (OAH), none of these diagnoses or Doctor's professional medical opinions were allowed or offered. CalPERS continues to omit the essential function documents and only refer to the alleged ability of the Respondent to perform her duties.

In Beckley 222 Cal.App.4th at pages 694-695, a California Highway Patrol (CHP) officer suffered a disability on the job and was sent home on leave because he could not perform the 14 critical tasks required of all CHP officers at any time. CALPERS denied the officer's application for IDR because he could perform the usual duties of his most recent position as a public affairs officer, which rarely included any of the 14 critical tasks. The Beckley court found CalPERS was required to evaluate the officer's ability to perform the usual duties of a CHP officer, including the 14 critical tasks, not simply the duties of his most recent position.

Respondent's injuries were sustained in this current case while on duty on July 31, 2014, performing duties that are listed in the job duty statement. Further, while performing these duties she was "run over" from behind by a cart pushed by another employee, no fault of her own.

Under the heading of "Burden and Standard of Proof, it states: "Absent a statutory presumption, an applicant for a disability retirement has the burden of proving that he or she is entitled to it by a preponderance of the evidence. The evidence was not fully provided by Respondent's representation, however, in this argument against the proposed decision, Respondent has clearly laid out her proof. Dr. Kolesnik's medical diagnoses and evaluation and observation of the Respondent is inaccurate and lacks any medical evaluation regarding the Respondent's physical condition resulting from the injury on July 31, 2014.

In conclusion, the Respondent is a state member of CalPERS, Pursuant to Government Code Section 21151. All the required CalPERS documentation to qualify for an IDR has been submitted, and resubmitted in this argument by the Respondent. The documents and this argument support the IDR requirements stating the respondent is incapacitated physically from performing her duties in the state service 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 duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion."

CalPERS is basing their proposed denial on ONE Doctor, a doctor who did not treat, but merely met with the Respondent ONE time, reviewed her past medical history and determined in the best interest of CalPERS, not of an employee with genuine pain and suffering as a result of her employment with CalPERS.

The Administrative Law Judge's proposed decision is incomplete and based on negligent and misrepresented medical opinion. Respondent request that ALL treating doctor's diagnoses be reviewed and used in their final decision.


DAISY S. CHISHOLM, Petitioner

08-06-2019
Date