

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter of the Appeal of Reinstatement from Industrial
Disability Retirement of:**

SABRINA R. CARTER, Respondent

and

**DEPARTMENT OF DEVELOPMENTAL SERVICES, PORTERVILLE
STATE HOSPITAL, Respondent**

Agency Case No. 2019-0234

OAH No. 2019070276

PROPOSED DECISION

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on January 14, 2020, in Fresno, California.

Helen L. Louie, Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Sabrina R. Carter (respondent) was present and represented herself.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED February 18, 2020
JLH

FACTUAL FINDINGS

There was no appearance by or on behalf of the Department of Developmental Services, Porterville State Hospital (DDS). CalPERS established that DDS was properly served with the Notice of Hearing. Consequently, this matter proceeded as a default hearing against DDS under Government Code section 11520.¹

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 14, 2020.

ISSUE

Is respondent still disabled or substantially incapacitated from performance of her usual job duties as a Psychiatric Technician Assistant (PT assistant) for DDS due to orthopedic (upper extremities and back) conditions?

Jurisdiction and Procedural History

1. On September 19, 2001, respondent submitted an application for industrial disability retirement (application). Respondent stated the specific disability occurred on October 5, 1999, while she was transferring a resistant client from a toilet to a wheelchair. Respondent listed her claimed injuries as: chronic cervical strain, myofascial pain syndrome, and associated headaches; mild thoracic outlet syndrome; and chronic thoracal lumbar strain. Her claimed job limitations were: no heavy lifting;

¹ Because DDS Porterville did not appear, all further references to "respondent" herein are to Sabrina Carter.

and no repeated overhead reaching, pushing or pulling, grasping, upward gazing, torquing, bending, stooping or climbing. In January 2003 CalPERS approved the application. Respondent retired for disability on the basis of orthopedic (upper extremities and back) conditions, effective September 6, 2002. By virtue of her employment as a DDS PT assistant, respondent was a state safety member of CalPERS.

2. On August 22, 2008, CalPERS notified respondent that it would reevaluate her orthopedic conditions, and requested she provide medical reports and information. On May 8, 2009, respondent underwent an independent medical examination (IME) with Ernest B. Miller, M.D., an orthopedic surgeon CalPERS had retained. The evaluator reviewed respondent's extensive medical reports and information, physically examined her, and determined she was no longer disabled or substantially incapacitated from the performance of her job duties as a PT assistant due to her orthopedic (upper extremities and back) conditions.

3. CalPERS notified respondent of its determination that she was no longer disabled or incapacitated from her job duties in November 2009, and respondent timely appealed its determination in December 2009. Following an August 2012 administrative hearing, the CalPERS Board of Administration (Board) issued a decision on November 15, 2012 (reinstatement decision), affirming the determination that respondent was no longer permanently disabled or incapacitated from performing her job duties as a PT assistant, canceling her previous disability retirement, and reinstating her to her position as a PT assistant. The reinstatement decision was effective on January 15, 2013. Respondent did not subsequently appeal the reinstatement decision.

4. Despite the reinstatement decision, respondent continued to receive disability retirement payments due to an administrative error within CalPERS.² At the time of hearing in this matter, she had been receiving erroneous disability retirement benefits since January 15, 2013. On January 28, 2018, CalPERS realized its error and notified respondent and DDS that it would reevaluate respondent's orthopedic (upper extremities and back) condition again, and requested she provide medical reports and information.

5. On October 24, 2018, Donald C. Pompan, M.D., an orthopedic surgeon, conducted an IME (2018 IME) of respondent and determined she was no longer disabled or substantially incapacitated from the performance of her usual job duties as a PT assistant. On November 21, 2018, CalPERS notified respondent and DDS of its determination. Respondent timely appealed, and this matter followed. All jurisdictional requirements have been met.

Expert Opinion Based on 2018 IME

6. CalPERS relied upon Dr. Pompan as its expert witness. Dr. Pompan is board-certified in orthopedic surgery and has been in private practice in Salinas, California, since 1994. He has performed a variety of orthopedic surgeries for many years. He also specializes in treating patients with a broad scope of orthopedic problems involving the shoulders, elbows, knees, hands, fingers, bones, muscles, tendons, joints, and spine. His philosophy of patient treatment emphasizes the

² CalPERS apparently awaited a return-to-work date from respondent's employer before taking further action affecting respondent's retirement benefits, but that information was not provided.

exploration of non-surgical approaches to solving orthopedic issues utilizing education, therapy, and non-invasive interventions. He has performed independent evaluations in both personal injury and workers' compensation cases, and has performed IMEs for CalPERS for approximately five years. Dr. Pompan examined respondent on October 24, 2018, took a history, reviewed her medical records and job duties, and issued an IME report. Dr. Pompan also testified regarding his observations and findings.

7. Dr. Pompan was provided with detailed job descriptions for review. According to the Porterville Developmental Center Job Analysis, the PT assistant (safety member) works in a residential facility for adolescents and adults with developmental disabilities residing in either the General Treatment Area or the Secure Treatment Area. The PT assistant is supervised by a shift supervisor and/or residence manager and must: assist with training and recreation activities; provide physical care for assigned clients; provide a sufficient living environment for clients; comply with facility, residence and program policies and procedures, and subscribe to facility philosophies and procedures. The PT assistant must also maintain current certified nurse assistant certification; assist with implementing Individual Habitation plans; communicate with staff; provide light housekeeping services; observe clients' conditions and behaviors, and report changes or serious conditions to supervision; document relevant client data; keep an inventory of clients' clothing and personal items; and perform various other duties as assigned.

The PT assistant must lift up to 50 pounds; intervene with, restrain or contain clients; work extended shifts and overtime. "Tools of the trade" include computer and office equipment, trucks, cars, or carts. The PT assistant must stand and walk frequently (2.5 to 5.25 hours per day) to continuously (5.25 to 8 hours per day), sit

occasionally (.5 to 2.5 hours per day), lightly bend continuously, moderately bend frequently, and fully bend occasionally to frequently. The PT assistant must: squat frequently; kneel occasionally to frequently; crawl rarely (5 minutes or less daily); twist at the waist frequently; extend and flex the neck frequently; twist the neck frequently to continuously; and laterally flex the neck rarely. Running and jumping and balancing is occasional to frequent. Climbing stairs and ramps is frequent, and climbing step stools is infrequent (6 to 30 minutes per day).

The PT assistant lifts and carries up to 10 pounds continuously, 11 to 25 pounds frequently, and 26 to 50 pounds occasionally, but never lifts or carries items weighing from 51 to 100 pounds. Light, moderate and full pushing and pulling is frequent. Reaching above the shoulder is continuous, while reaching below the shoulder is frequent. Simple grasping, forceful grasping, fine manipulation, and turning/twisting the wrists is continuous. Client containment or restraint measures are performed frequently to continuously. Communication is continuous.

8. According to the CalPERS "Physical Requirements of Position/Occupational Title" form completed by respondent's employer, the physical requirements of the PT assistant position are similarly set forth in terms of frequency, which is categorized as "never," "occasionally" (up to three hours), "frequently" (three to six hours), and "constantly" (over six hours).³ In particular, the PT assistant occasionally sits, runs, crawls, kneels, climbs, squats, reaches above and below the shoulder, power grasps, uses a keyboard and mouse, walks on uneven ground, drives,

³ The frequencies of various job activities were similar, but not identical, to the estimates contained in the Porterville Developmental Center Job Analysis and noted above in Finding 7.

and works with heavy equipment. The PT assistant is also occasionally exposed to excessive noise, extreme temperatures, dust, gas, fumes or chemicals, using special audio/visual equipment, and working with biohazards. The PT assistant frequently stands, walks, bends and twists at the neck and waist, pushes and pulls, exerts fine manipulation, does simple grasping, and makes repetitive use of hands. The PT assistant frequently lifts items up to 10 pounds, occasionally lifts items weighing 11 to 50 pounds, but never lifts over 50 pounds.

9. Respondent was 47 years old when Dr. Pompan conducted her IME. She described her work injury as occurring in 1999, when she was helping a 300-plus-pound patient. When the patient lost her balance, respondent had to support the patient's weight. Respondent felt immediate pain in the lower back, upper back, and thigh/groin areas. Respondent reported she received medical treatment, was taken off work, and returned to work with light duty restrictions, but her position did not accommodate light duty. She underwent physical therapy, but her symptoms persisted. Dr. Pompan noted the first treatment record occurred on October 7, 1999, when Dr. R.W. Crane diagnosed respondent with "left lumbosacral strain, upper thigh and groin strain." Also, a cervical spine MRI taken on November 12, 1999, noted "mild bulging annulus at C4 and C5-6."

10. Dr. Pompan reviewed respondent's medical records that followed her injury and also discussed her medical history with her, noting that in May 2000, Dr. Steven Schopler diagnosed her with subscapular bursitis right, and lumbar strain, possibly due to thoracic outlet syndrome (i.e., disorders that occur when certain blood vessels or nerves are compressed). An EMG/nerve conduction study was performed in June 2000, with no abnormalities noted. In December 2000, Dr. Shelby Gordon evaluated respondent for thoracic outlet syndrome and concluded it was "playing a

minor role" in respondent's "overall pain syndrome." Also in December 2000, Dr. Gelabert concluded that an MRI indicated spasm of the paraspinal muscles leading to "abnormal curvature of the spine," but did not recommend surgery. Respondent had an MRI of the shoulder in February 2001 that did not show significant pathology. She continued on temporary total disability and did not return to her job. In May 2001, Dr. Michael Wlasichuk diagnosed respondent with cervical strain/myofascial pain syndrome to the bilateral upper and mid-trapezius muscles, headache secondary to this condition, chronic lumbar strain and mild right thoracic outlet syndrome. A nerve conduction study in June 2001 showed no evidence of nerve entrapment, and July 2001 MRIs of the lumbar spine and cervical spine did not show significant pathology. In July 2001, Dr. Wlasichuk wrote a permanent and stationary report and assessed respondent with "chronic cervical strain/myofascial pain syndrome with the bilateral upper and mid-trapezius muscles," headache secondary to this condition, chronic lumbar strain and mild right thoracic outlet syndrome.

11. Dr. Pompan's records review and interview with respondent further revealed that in January 2002, Dr. Alan Sanders, an orthopedic surgeon, examined respondent and noted no objective factors of disability, but did note some subjective factors. Dr. Sanders opined that respondent could return to her usual and customary job activity without restrictions. But in May 2002, Dr. Branscum diagnosed respondent with a neck sprain, a severe sprain of the shoulder girdles with muscle spasm, a sprain of the thoracic area, and sprain of the low back. He concluded respondent had a disability to her spine precluding overhead working; a disability of the shoulder girdles, precluding heavy lifting, heavy pushing and pulling, and extremities use at shoulder height or above; and a lumbar spine disability, precluding heavy lifting, repetitive bending and stooping. In November 2002, Dr. Mark Nystrom evaluated respondent and diagnosed her with lumbosacral spine strain, cervical and thoracic

strain, and pain, headaches secondary to her neck complaints, and mild thoracic outlet syndrome. Although Dr. Nystrom noted objective factors due to prior MRI results, those MRI results were essentially normal. Dr. Nystrom opined that permanent work restrictions, including no lifting over 10 pounds, and no bending, stooping, twisting, turning, squatting, pushing, pulling or reaching. As a result, respondent was precluded from returning to work.

12. Respondent informed Dr. Pompan that in the years that followed she saw Dr. Inez Fabella as her primary care physician, and Dr. Fabella treated her for non-orthopedic issues. Respondent began working as an LVN with in-home patients, did paperwork, educated clients and followed their use of medications, and avoided lifting clients. She reported that her condition worsened, which led her to return to Dr. Wlasichuk in October 2008, who diagnosed her with “[c]hronic thoracolumbar strain/myofascial pain syndrome of the paraspinal musculature” and “[p]robable fibromyalgia.” She was treated with narcotic pain medication and no further testing was done.

13. In May 2009, Dr. Miller performed an IME on respondent, diagnosing her with “[c]ervical, thoracic, lumbar strain/sprain superimposed upon chronic pain syndrome with a diagnosis of fibromyalgia and myofascial pain syndrome with symptom magnification and exaggeration.” Dr. Miller opined she was not substantially incapacitated from her usual job duties based on any musculoskeletal disability. Respondent said there was a CalPERS hearing and an attempt to have her return to her previous job, but she did not go back to work. She returned to Dr. Wlashinguk, who disagreed with Dr. Miller’s opinions and noted continued significant issues, but made no new diagnoses.

14. When respondent presented for her 2018 IME, her current complaints were still regarding her 1999 injury and were regarding both sides of the neck, extending between her shoulder blades, mostly in the para-cervical musculature, and in the upper trapezius musculature bilaterally. Respondent stated there was a “knot” in the musculature, she had knots and spasms in the lower lumbar area, and she was in constant pain she rated as a 7 on a 10 scale. She complained of radiating pain in both thumbs bilaterally, pain going across the lower back, and significant pain above the right buttock. She believes she has made little improvement over the years. Respondent does not feel she can return to her PT assistant job because she would be unable to push and pull wheelchairs and lift clients, lift more than 20 to 25 pounds, subdue or contain clients, or engage in repetitive bending and stooping as required. Respondent is no longer receiving medical care or rehabilitation for her industrial injuries. She recently was evaluated by Dr. Charles Boniske, a rheumatologist, who diagnosed her with fibromyalgia.

15. Respondent’s physical examination revealed that she walked with a non-antalgic gait (i.e., with movements to avoid pain). She forward-flexed to approximately six to eight inches from the floor with her fingertips, and her knees in full extension. She backward extended to approximately 20 degrees. Side to side, she had good rotation to approximately 60 degrees. She was “very diffusely tender” in the lower lumbar area. Dr. Pompan could not identify trigger points or spasms.

16. Respondent had normal strength and sensation in the feet. She had normal 5/5 strength of the extensor hallucis longus, tibialis anterior and tibialis posterior, and no evidence of radiculopathy (i.e., nerve root disease). She demonstrated full range of motion of the cervical spine, although with pain. She could fully extend, flex, and rotate to either side. She was very diffusely tender in the upper

trapezius and scapula regions. Upper extremities were normal. Dr. Pompan could not identify trigger points or spasms. There was no evidence of atrophy in the calves. No radiculopathy was evident in the upper or lower extremities.

17. Following his examination, interview with respondent, and review of her case history and medical records, Dr. Pompan reached the following diagnoses:

1. Chronic cervical strain with diagnosis of myofascial pain syndrome.
2. Chronic lumbar strain with myofascial pain.
3. Possible history of thoracic outlet syndrome.
4. Possible fibromyalgia.

In considering respondent's orthopedic conditions, Dr. Pompan limited his opinions to the objective findings he could make. Regarding her physical examination, he made no significant objective findings, noting that respondent had good range of motion of the spine and no evidence of radiculopathy. The only positive finding was tenderness, which, as a pain response, is subjective. Respondent's prior MRI scans of the lumbar and cervical spine were negative; thus, there were no objective results of an orthopedic incapacity.

18. From the medical record, Dr. Pompan recognized differences of opinion as to whether respondent was physically disabled. In considering the extensive medical treatment history respondent received, Dr. Pompan noted that although some physicians made positive findings, such findings were often contradicted by other physicians' subsequent findings.

19. In response to specific questions posited by CalPERS regarding respondent's ability to work, Dr. Pompan's professional opinions are as follows:

1. *In your professional opinion, is the member presently substantially incapacitated for the performance of [her/ duties? [Respondent] is not incapacitated from an orthopedic standpoint.*

2. *Based on your objective findings, are there specific job duties that you feel the member is unable to perform because of a physical or mental condition? No. There are no orthopedic objective findings on which to base a conclusion that she is unable to perform a specific activity relating to her job.*

3. *Is the member cooperating with the examination and putting forth their best effort, or do you feel there is an exaggeration of complaints? Yes. I saw no evidence of embellishment.*

19. Subsequent to issuance of his October 2018 IME report, CalPERS sent additional records to Dr. Pompan on two separate occasions. As such, Dr. Pompan generated two supplemental reports as follows:

a. June 5, 2019 Supplemental Report – Dr. Pompan received an additional two-page job duty statement entitled "Porterville Developmental Center, Psychiatric Technician Assistant." Dr. Pompan noted relevant physical requirements in the job duty statement and opined that his

original opinion was "not changed" by his review of the job duty statement.

b. December 19, 2019 Supplemental Report – Dr. Pompan received 45 pages of medical treatment records for respondent's treatment as follows: a June 7, 2018 examination report from Charles Boniske, M.D.; October, November and December 2019 physical therapy reports (author unknown); a November 23, 2019 report from Okiemute Odeghe, N.P., an October 16, 2019 evaluation report and November 13, 2019 physician's note from Henry Nasr, M.D.; and a December 8, 2019 lumbar X-ray report from Darren Smith, M.D. These records were not submitted in evidence. Dr. Pompan noted that these additional records indicated respondent was being treated by medical professionals other than orthopedists, including a rheumatologist (Dr. Boniske) and a pain medication specialist (Dr. Nasr). Notably, Dr. Boniske noted full range of motion; these findings were much like the good range of motion Dr. Pompan documented in the IME examination. Dr. Pompan concluded that his original opinion was unchanged, stating he "did not find any orthopedic diagnoses or objective findings that are disabling in regards to [respondent] performing her essential job functions."

Respondent's Evidence

20. Respondent testified that her condition has worsened since her IME with Dr. Pompan, and she now also suffers from irritable bowel syndrome. After her 1999 injury, she believed she would get better, but the PT assistant job is "very physical" and requires bending, lifting, bearing clients' weight while transporting clients, and restraining and containing clients. She did not improve enough to return to work. Today, she is no longer physically fit due to her ailments and is often in bed due to pain. Physical therapy has been "excruciating" for her, and she no longer has "pain free" days. She is being screened for lupus and sleeps poorly due to anxiety. Respondent believes she can get a job, but her physical limitations and pain would make working difficult. "Physically and mentally," she believes "it's too much" to take on the responsibilities of a job. Respondent still does not know what ails her, but her body is not recovering. She is happy when an MRI comes back "clean," but continues to be frustrated by the uncertainty of her condition. All of this had left her "over the top stressed."

21. Respondent submitted several medical records, including: 1) a November 2002 CalPERS IME report from Mark Nystrom, M.D., 2) a December 18, 2009 physical therapy discharge report from Dr. Nasr; 3) a January 8, 2020 X-ray lumbar spine report from Dr. Nasr; 4) a January 9, 2020 referral order from Okiemute Odeghe, N.P.; and 5) a January 13, 2020 office visit note from Dr. Nasr.⁴

⁴ Documents 1 and 2 were received in evidence without objection. Documents 3 through 5 were received as administrative hearsay pursuant to Government Code section 11513, subdivision (d), which states, in relevant part: "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely

22. Charles Carter, III, is respondent's younger brother. He received a medical degree from Michigan State University and specializes in psychiatry, but has yet to become a licensed medical doctor in California. Years ago he worked as a social worker associate at Porterville Developmental Center, where respondent worked as a PT assistant. He testified that due to this work experience, he is aware of respondent's job duties as a PT assistant. He opined that Dr. Nasr's January 13, 2020 office visit, which notes an assessment of "[c]ervical/lumbar radiculitis, [c]ervical/lumbar degenerative disc disease; [c]ervical/lumbar facet arthropathy; myofascial pain syndrome; [and] irritable bowel syndrome," indicates physical restrictions which would "make it difficult" for respondent to perform her job duties. In particular, Mr. Carter believed respondent would be unable to physically redirect or contain clients if needed, and this inability could potentially be dangerous to respondent, clients, and co-workers. In addition, he lives with respondent and observes her daily, and stated that her condition makes it difficult for her to do routine daily living tasks, sometimes even leaving her bedridden. He noted respondent's January 9, 2020 referral order for a rheumatology workup was partly based on an abnormal antinuclear antibody (ANA) test, which could determine if she has an autoimmune disease such as lupus. He believed this potential rheumatologic condition, and her other degenerative conditions, could cause joint or spine arthropathy and the kind of pain that a medical evaluator would have difficulty quantifying objectively. In sum, he opined that the medical evidence showed "something is going on."

objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions"

23. On cross-examination, Mr. Carter conceded that he had no orthopedic medical background, nor did he know the specific CalPERS disability standard employed in these cases. He did not know "for sure," but believed elevated ANA levels could possibly affect a person's back. When asked to identify objective medical findings in the records supporting his opinions, Mr. Carter noted only that an MRI showing a bulging disc in respondent's spine causes chronic pain, making it difficult for her to lift, or contain, clients while working.

24. While testifying, Dr. Pompan reviewed the five records respondent submitted at hearing. He concluded none of the records changed his original opinion that she was not substantially incapacitated from performing her usual job duties as a PT assistant. He further noted that the January 2020 MRI lumbar spine report by Dr. Loeffler indicated normally aligned lumbar vertebrae, intervertebral disk spaces that were "preserved and normal," paraspinal soft tissues that were normal, and a widely patent spinal canal and neural foramina, which is good. Only one mild posterolateral disk bulge was present at L5/S1, but such disc bulging is very common and experienced by approximately 50 percent of patients in respondent's general age range. He observed no evidence of any new injury. In sum, he considered these MRI results to be "clean" and "good news" for respondent, as they showed her back is structurally intact.

Discussion

25. 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 industrial disability retirement in 2002 at the age of 31. 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.)

26. Based on all of the evidence presented, CalPERS established that respondent was not substantially incapacitated on the basis of an orthopedic condition of the upper extremities and back such that it would interfere with respondent's usual activities as a Psychiatric Technician Assistant at a State Correctional Facility. In making this determination, the 2018 IME opinion of Dr. Pompano was persuasive that respondent is not substantially incapacitated for performing her usual work of a Psychiatric Technician Assistant in the Department of Developmental Services state hospital system on an orthopedic basis.

27. Respondent did not submit competent medical evidence of impairment to contravene CalPERS' evidence. Although her testimony regarding the pain she experiences was sincere, Dr. Pompano found no objective medical evidence to correlate respondent's subjective complaints. Also, Mr. Carter's testimony was substantially less persuasive than Dr. Pompano's opinions due to Mr. Carter's lack of medical licensure and absence of experience in orthopedic medicine.

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. 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 September 2002, albeit erroneously since November 2012. CalPERS filed this Accusation to compel her involuntary reinstatement from disability retirement, so

the burden rests upon CalPERS to prove its contentions based on competent medical evidence by a preponderance of the evidence. CalPERS met its burden.

3. Pursuant to Government Code section 21192, 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

4. Government Code section 21193 states, in relevant part:

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 . . . ”

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.)

5. CalPERS met its burden of proving by competent medical evidence that respondent is no longer substantially disabled for performance of her duties as a Psychiatric Technician Assistant at a Department of Developmental Services state hospital. For the reasons set forth in Findings 25 through 27, Dr. Pompan’s opinions that respondent is not substantially incapacitated for performance of her usual job duties as a PT assistant were compelling and persuasive.

ORDER

Respondent Sabrina R. Carter is not substantially disabled for performance of her duties as a Psychiatric Technician Assistant at a Department of Developmental Services state hospital. 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 DDS Psychiatric Technician Assistant.

DATE: February 11, 2020

DocuSigned by:
John DeCure
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JOHN E. DeCURE

Administrative Law Judge

Office of Administrative Hearings