OPINION and AWARD

Before

RICHARD L. AHEARN

Arbitrator

Case No. AAA 01-17-0002-3919
(Phyliss Williams-Pearson Grievance)

WASHINGTON FEDERATION OF STATE EMPLOYEES

Union

and

WASHINGTON STATE DEPT. OF SOCIAL & HEALTH SERVICES

Employer

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OPINION

I. INTRODUCTION

This matter concerns a dispute between the Washington Federation of State Employees (Union) and the Washington State Department of Social and Health Services (Employer). The Union and Employer have been at all material times parties to a 2015-2017 collective bargaining agreement, herein the CBA. On April 11, 2016, the Union filed a grievance over the disability separation issued by the Employer on April 5, 2016 to Phyliss Williams-Pearson (grievant).[1] The grievance alleged that the disability separation violated the Parties' CBA and sought reinstatement, back pay and any other remedies to make grievant whole.

With no mutual resolution of the grievance, through the auspices of the American Arbitration Association, the Parties selected me as the neutral arbitrator to decide this matter. At the hearing held on April 30, 2018 in Tacoma, Washington, the Parties had full opportunity to call witnesses, to make arguments and to enter documents into the record. Witnesses were sworn under oath and subject to cross-examination by the opposing Party. The Parties stipulated that the grievance is properly before me for decision on the merits and that I would retain jurisdiction to aid in the implementation of any remedy, should that be necessary. Following the close of testimony, I received timely-filed and well-written briefs from the Parties and the record closed effective June 29, 2018.

II. STATEMENT OF THE ISSUE

In accord with the Parties' stipulation, the issue before me is:

Did the Employer violate Article 32 of the Parties' CBA when it issued a disability separation letter to grievant on April 5?[2]

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[1] All dates 2016 unless specified otherwise.

[2] Although the grievance initially alleged violations of numerous articles in the CBA, at hearing the Union stipulated that the grievance was limited to alleged violations of Article 32.

If so, what is the appropriate remedy?

III. RELEVANT CBA ARTICLES

ARTICLE 32

REASONABLE ACCOMMODATION AND DISABILITY SEPARATION

32.1 Reasonable Accommodation

A. The Employer and the Union will comply with all relevant federal and state laws, regulations and executive orders providing reasonable accommodations to qualified individuals with disabilities.

B. An employee who believes that he or she suffers a disability and requires a reasonable accommodation to perform the essential functions of his or her position may request such an accommodation by submitting a request to the Employer. The Employer will acknowledge receipt of the request for reasonable accommodation or disability separation. The Employer will begin processing a reasonable accommodation request within thirty (30) calendar days.

C. Employees requesting accommodation must cooperate with the Employer in discussing the need for and possible form of any accommodation. The Employer may require supporting medical documentation and may require the employee to obtain a second medical opinion from a physician or licensed mental health professional of the agency's choice and at Employer expense. Evidence may be requested from the physician or licensed mental health professional regarding the employee's limitations. The Employer will conduct a diligent review and search for possible accommodations within the agency. Medical information disclosed to the Employer will be kept confidential. Upon request, an employee will be provided a copy of his or her reasonable accommodation information that is maintained by the Employer.

D. The Employer will determine whether an employee is eligible for a reasonable accommodation and the final form of any accommodation to be provided. The Employer will attempt to accommodate the employee in his or her current position prior to looking at accommodations in alternative vacant positions.

32.2 Disability Separation

A. An employee with permanent status may be separated from service when the agency determines that the employee is unable to perform the essential functions of the employee's position due to a mental, sensory or physical disability, which cannot be reasonably accommodated. Determinations of disability may be made by the agency based on an employee's written request for disability separation or after obtaining a written statement from a physician or licensed mental health professional.

B. The agency may separate an employee after providing at least fourteen (14) calendar days' written notice when the agency has medical documentation of the employee's disability and has determined that the employee cannot be reasonably accommodated in any available position. The agency may immediately separate an employee that requests separation due to disability.

C. An employee separated due to disability will be placed in the General Government Transition Pool Program if he or she submits a written request to the agency's Human Resources Office for reemployment in accordance with WAC 357-46-090 through -105 and has met the reemployment requirements of WAC 357-19-475.

D. Disability separation is not a disciplinary action. An employee who has been separated because of a disability may grieve his or her disability separation in accordance with Article 29, Grievance Procedure, unless the separation was at the employee's request.

IV. EVIDENCE

Background

Grievant had been employed by the Employer as a Social Worker 3 for approximately 12½ years. She possesses a Master's degree in marriage and family therapy and completed child administration training. Her job responsibilities included working with children, referring them to various services and making certain that their out-of-home placements were safe and that all their needs were being met. Her multiple tasks involved a combination of desk work and fieldwork, including home visits, court hearings and transportation of children. In March, 2015, grievant was diagnosed with invasive breast cancer, and on April 4, 2015 underwent lumpectomy surgery. On April 10, 2015, the Employer approved 12 weeks of FMLA leave; grievant also received over 180 hours of paid leave pursuant to the shared leave program. In addition, in order to be eligible for medical insurance, grievant began working remotely in a low-impact capacity eight hours a month.

Reasonable Accommodation Requests

On July 17, 2015, the Employer opened a Reasonable Accommodation case for grievant, and on July 27, 2015, Dr. Sibel Blau (Dr. Blau), grievant's oncologist, responded to the Employer's request for information, described numerous impairments

from which grievant was suffering, observed that work would exacerbate grievant's problems and expressed the anticipation that grievant could return to work in 90 days. Thereafter, on August 6, 2015, the Employer determined that the grievant provided sufficient medical documentation to be placed on leave of absence status for 90 days, with an expected return in the middle of November.[3] Unfortunately, in November 2015, grievant learned that the cancer had spread to her lymph nodes and that she would need additional treatment.

Various email communications among grievant's supervisors and Jodi Manfred (Manfred), Reasonable Accommodation Specialist, revealed internal discussions in November 2015 regarding when grievant was expected to return to work and whether there would be any limitations on her ability to handle her "very strenuous" position. In one message, supervisor Deanna Dessau (Dessau) reported that in the middle of December grievant had expressed continued pain with low range of motion in her arm, that she could not provide a return date and that she had not received a release to return to her position.[4]

On January 14, Manfred determined that grievant would need to provide an update on her ability to return to work. As a result, on January 20, Vicki Stock (Stock), Area Administrator for the Employer, submitted a letter to grievant in which Stock expressed appreciation for grievant's willingness to cooperate in the interactive reasonable accommodation process and enclosed a questionnaire for grievant's physician to complete. Stock's letter asserted that if the requested medical information was not received timely, Stock would assume that grievant was not interested in pursuing reasonable accommodation and that she would be expected to return to work full-time immediately. The letter concluded by encouraging grievant to contact Manfred if she had any questions about the reasonable accommodation process.

[3] On October 20, 2015 grievant applied for long-term disability insurance.
[4] Dessau did not testify at the hearing.

On January 29, Dr. Blau completed the Employer's requested questionnaire that was preceded by a detailed description of the responsibilities of a Social Services Specialist 3 (SS3), expressed the Employer's commitment to providing reasonable accommodations and included eight separate questions, with several having multiple subsets.[5] In her response to the Employer, Dr. Blau expressed in pertinent part that:[6]

- Grievant needed continued leave from work.
- Grievant will return full time with reliable attendance to her former position in 2 months.[7]
- Grievant could not work a part-time schedule in another position at this time.
- There is no predictability as to when grievant can be expected to be able to return to work in another capacity.
- A "desk job" would be a good fit.

The reference to a "desk job" appeared in response to the last question, requesting an answer only if Dr. Blau concluded that grievant would not be able to return to her former position, or if she could not predict when grievant would be able to return to that job.[8]

On February 10, the Employer informed grievant that based on Dr. Blau's medical documentation that grievant needed 60 days leave in order to perform the essential functions of her position, it approved her leave request for 2 more months, with an expected return of April 1.[9] The Employer also explained that she had been on a leave of absence for nearly one year and that it looked forward to her full release on April 1. It further explained that if she needed additional leave beyond April 1, they would need to meet to discuss next steps in determining her ability to return to her former position. The memo also explained that the obligation to provide reasonable accommodation is ongoing and that if in the future grievant believes she requires a reasonable

[5] The positions of SS3 and Social Worker 3 are identical; apparently at some point the title was changed.
[6] As will be addressed below, some of Dr. Blau's responses are internally inconsistent.
[7] In 3 places on the questionnaire Dr. Blau expressed that grievant would return in 2 months.
[8] There is no evidence of any subsequent mention of a "desk job."
[9] This was the 4th request for medical leave the Employer granted. An April date would represent approximately one year since grievant went on leave.

accommodation, that she should contact her supervisor or Human Resources. There is no evidence of a response from grievant.

According to Stock, in late March, during a telephone conversation with grievant, Stock expressed a desire to know whether Dr. Blau's expectations were realistic, as Stock did not want to set grievant up for failure. Stock further testified that grievant indicated surprise as she was not expecting to be able to return to work the following month. For her part, grievant denied expressing a belief that she would be unable to return to work. There is no evidence of any mention of a "desk job" or any finite date of return during the telephone conversation.

Following the above phone call, on about March 31, grievant submitted another letter (the March letter) from Dr. Blau, who advised that grievant's conditions, including approximately ten (10) distinct ailments, "make it impossible… to engage in mildly arduous and/or lengthy activities."[10] Most significantly, Dr. Blau stated: "...I do not release her to work." The latter conclusion was unconditional and unlike Dr. Blau's January message, contained no estimate of when grievant might be able to return to work.

Subsequently, on April 4, following an email from Stock to Manfred that recognized the March letter failed to indicate a time frame or describe any position that grievant could fill, Manfred informed grievant by email that Dr. Blau's letter needed to state: "...patient cannot work in any capacity for the foreseeable future." Manfred further expressed that failing such a statement, grievant would need to report to work or her absences "may be unauthorized." The communication to grievant did not explain that the language requested by Manfred would result in disability separation.

[10] The letter is undated, but appears to have been received on March 31.

Upon receiving the above directions from Manfred, grievant spoke to Dr. Blau's office and explained that the letter needed to contain the language set forth in Manfred's April 4 email. Late that afternoon grievant submitted to the Employer a revised letter from Dr. Blau that was otherwise identical to the March letter, but that also incorporated the language Manfred had provided grievant, stating that grievant "cannot work in any capacity for the foreseeable future."

Early in the morning of April 5, Manfred sent an email to grievant, thanking her and explaining that she would prepare the disability separation letter for Stock. Shortly thereafter grievant sent an email to Stock and Manfred, expressing gratitude for being part of such a collaborative team and stating that she was following her "treatment plan so I can get back to serving our children and families."

Later that day the Employer issued the disability separation letter that relied on Dr. Blau's April 4 revised letter for the conclusion: "...due to a disabling condition you are no longer able to work in any capacity." The letter also included guidance to grievant if she wished to pursue possible options to return to work.

According to grievant, she did not understand the significance of the language that the Employer directed her to have included in the April letter from Dr. Blau, as she was under considerable stress and focused on regaining her health. She also explained that she was merely following the instructions of a supervisor.

Subsequent Events Following the Disability Separation

Following the filing of this grievance, Union Representative Jason Watson (Watson) engaged the Employer in various meetings to seek a solution for grievant.[11] In connection with those efforts, by letter dated August 10, Dr. Blau continued to list

[11] Prior to the filing of the grievance, grievant had not sought the assistance of the Union.

numerous ailments from which grievant was suffering, and recommended that grievant was capable of performing the job functions of Office Assistant one.[12]

According to Connie Minton (Minton), Reasonable Accommodation Manager, during a November meeting with grievant and her mother, Minton explained that she would work with grievant to find a range of appropriate positions if she received updated information on grievant's limitations and capabilities. However, grievant assertedly never responded regarding the reassignment process, at least in part because she understood she would have to withdraw the instant grievance, with no guarantee of a satisfactory placement. Grievant currently remains on Social Security Disability Insurance (SSDI).

For her part grievant testified that she did not wish to be demoted and mentioned that there are "desk jobs" in the adoptions unit that she could perform and that would presumably be at her former pay rate. By contrast, Dr. Joel Odimba (Dr. Obimba), Regional Administrator, testified that the positions in adoptions include most of the same duties as the SS3 position and that no "low-impact" positions exist at the same pay rate.

V. PARTIES' POSITIONS SUMMARIZED

Union

The Union argues that the Employer failed to follow its obligation to provide reasonable accommodation to grievant as required by Article 32 as:

- The Employer failed to attempt to accommodate grievant prior to her disability separation.
- The Employer failed to investigate the possibility of a desk job prior to the disability separation.
- Grievant never indicated she did not want to return to work.

[12] That position is a lower grade than grievant's prior job, with lesser compensation. Further, the evidence reflects that Office Assistant one positions are limited to supported employees who work with job coaches. An April 27, 2018 letter from Dr. Blau contains generally consistent information and recommendation as in her August message.

- Grievant merely followed her supervisor's directions by requesting her physician incorporate specific language in a letter to the Employer.
- Grievant did not realize that the requested language would result in a disability separation.
- Grievant should be reinstated into a Social Worker 3 desk job, be made whole for all lost wages and benefits and any other appropriate remedy.

Employer

The Employer contends in summary:

- As the grieving party, the Union bears the burden of proof.
- Grievant was essentially requesting indefinite leave as a reasonable accommodation, a request the Employer is not required to grant.
- The Employer properly relied on the medical opinion of grievant's personal physician, who supported disability separation.
- Grievant's failure to engage in the reassignment process demonstrates that she was not interested in a position that would allow her to perform given her disability.
- The grievance should be denied in its entirety.

VI. ANALYSIS

A. Introduction

In accord with Article 32.2(D) of the CBA, grievant's disability separation is not a disciplinary matter. Thus the issue of whether the Employer has met its burden of demonstrating "just cause" for its conduct is not before me. Rather, as the moving party in this contract interpretation case, the Union bears the burden of proof to establish that its position is correct and that the Employer violated the CBA by its actions when issuing the April 5 disability separation letter.

My responsibility is to interpret the CBA by determining and carrying out the mutual intent of the Parties. In that regard I appreciate that Article 29.3, Step 5(D) provides that I have "…[n]o authority to add to, subtract from, or modify any of the provisions of…" the CBA. Among the various sources on which arbitrators principally rely to discern the parties' mutual intent are well-accepted standards of interpretation, concepts of past practice and the principle of reasonableness. St. Antoine, *The Common Law of the Workplace,* 71, (2d ed., 2005).

I initially note that the CBA contains no agreed-upon definition of "reasonable accommodation." In such circumstances one principle that arbitrators follow is to interpret terms "in the appropriate specialized sense unless the contract defines them differently, or extrinsic evidence proves they were used otherwise." Elkouri and Elkouri, *How Arbitration Works*, 9-23, (8th ed., 2016). In particular, arbitrators often rely on the expectation that parties negotiate their agreements with knowledge of and the expectation that the interpretations developed through jurisprudence will be controlling. *The Common Law of the Workplace*, supra at 76. Here the Parties have incorporated that principle by expressing in Article 32.1(A) their respective obligations to comply with relevant federal and state laws and regulations that provide reasonable accommodations to qualified individuals with disabilities.

With respect to analyzing the issue of what interactive process or accommodation, if any, was appropriate, I recognize the established principle that each party bears some responsibility for helping make that determination. Accordingly, each is expected to communicate or to assist the other party in assessing whether accommodations are appropriate. Ultimately my task is to determine whether under all the circumstances the Employer bears responsibility for any breakdown in the interactive process and in any failure to offer grievant a reasonable accommodation.

Alleged Failure to Accommodate Prior to Disability Separation

As reflected above, Article 32 establishes the following key responsibilities:

- Article 32.1(A) requires the Parties to comply with all relevant federal and state laws, regulations and executive orders providing **reasonable accommodations** to qualified individuals with disabilities. (Emphasis supplied).
- Article 32.1(C) requires employees requesting accommodation to cooperate with the Employer in discussing the need for and possible form of any accommodation.
- Article 31.2(C) further requires the Employer to conduct a diligent review and search for possible accommodations.[13]

As described below in detail, based on a careful review of the evidence, assessed in light of the established principles and contractual standards described above, I am persuaded that the Union failed to demonstrate that the Employer violated the CBA by its alleged failure to engage in a meaningful review and interactive process or by failing to offer a reasonable accommodation prior to the April disability separation.

As an initial matter, I recognize that a request for accommodation may arise in any form and need not come from the individual. On the other hand, it is well established that employers are obligated to make reasonable accommodation only to the physical or mental limitations resulting from the disability of the individual with a disability that is known to the employer. Thus, an employer cannot be expected to be clairvoyant; it would not be expected to accommodate disabilities of which it is unaware. C.F. R. § 29, Appendix to Part 1630.8. The language in Article 32.1 (C) that provides that the Employer may require documentation is consistent with this principle that any notice must have at least reasonably informed the Employer that grievant was seeking assistance for her disability.

[13] This portion of the Article follows language reflecting the Employer's right to require the employee to provide supporting documentation.

With respect to the Union's reliance on Dr. Blau's January comment that a "desk job" would be a good fit, I am persuaded that her observation standing alone could lead an arbitrator to conclude that the Employer "was aware" that grievant was seeking an accommodation to a "desk" position distinct from her former job. In that circumstance, I could agree with the Union that the Employer's subsequent failure to engage in an interactive process of exploring such options demonstrated bad faith. However, as described below, I am persuaded that the weight of the evidence, in the context described below, mandates a conclusion that this January observation did not make the Employer "aware" that grievant was seeking such an accommodation.

In this regard I observe that the Union's contention relies on a single observation by Dr. Blau, a comment that is contrary to her overriding message, repeated 3 times, that grievant would return without qualification to her former position in 2 months. Significantly, this expectation of a return to her full duties was delivered in the context of Dr. Blau's awareness of the varied and demanding duties of grievant's position, that in addition to desk tasks, included a large percentage of time making home visits, using an automobile and transporting children.

Further, I am persuaded that the "desk job" observation, with no clarification, is unclear and arguably ambiguous, as reflected in part by grievant's estimate at hearing that her former position was 60% "desk job." Similarly, Stock testified that she considered grievant's position a "desk job" and thus did not assume Dr. Blau was referring to a different position. In light of the foregoing understanding of 2 principal participants, I am persuaded that the "desk job" reference, even standing alone, may not have sufficiently signaled a desire for an accommodation to a different position, or for modifications to grievant's existing position.

In addition, the "desk job" reference arose in response to the final question, that was expressly conditioned on a conclusion either that grievant could not return to her

position, or that Dr. Blau could not predict when grievant could be expected to return in that capacity. As Dr. Blau's 3 earlier unqualified responses that grievant would return in 2 months to her former position are clear, unambiguous, and contrary to the conditions that invite a response to question 8, I find that a failure to answer the last question would have been logical and internally consistent. Nevertheless, for reasons that are unclear, Dr. Blau proceeded to provide an arguably superfluous response.

To the extent the Union contends that the best practice would have been for the Employer to follow through regarding Dr. Blau's "desk job" observation, I agree, as exploring all possible options, however remote, would serve the interests of both parties. Indeed, a simple inquiry might have resolved the issue to the satisfaction of all concerned. However, it is not my task to determine whether the Employer engaged in the most prudent course of action. Rather my authority is limited to deciding whether Dr. Blau's observation provided a sufficiently clear message to require the Employer to engage in an interactive process contemplated by Article 32.1.[14]

Under all the circumstances described above, particularly the earlier pattern of granting leave as a reasonable accommodation for grievant's condition, Dr. Blau's unqualified, unambiguous and repeated pronouncements of grievant's ability to return to her customary position in 2 months, as well as the ambiguity regarding the meaning and intent of the solitary "desk job" reference, I am persuaded that the January memo did not reasonably make the Employer "aware" that grievant was seeking any accommodation other than 2 months additional leave. Rather, I find that the overriding message, consistent with the prior requests, was that the "form" of accommodation sought was additional leave.

[14] Grievant's testimony that she understood Dr. Blau was asserting that it would be 18 months before she could return further reinforces the conclusion that the January message constituted a request for additional leave as the only reasonable accommodation, rather than any sort of job modification.

Further, although an individual is not required to make repeated requests, my conclusion is reinforced by the fact that at no time after grievant was granted the accommodation of an additional 2 months leave did she or Dr. Blau make any attempt to inform the Employer of a desire instead for a "desk job" accommodation. In light of the foregoing I am compelled to conclude that the evidence fails to establish a sufficiently clear message to trigger the Employer's Article 32.1 obligation to engage in the interactive process of attempting to accommodate a different or modified "desk job." [15]

The Employer's Recommendation for Specific Language

With respect to the Employer's April 4 request to grievant to have Dr. Blau include language that was later relied upon to support the disability separation, I agree that at first glance the Employer's approach appears suspicious, particularly absent an immediate explanation of the Employer's intentions. However, as set forth below, I am persuaded that the Employer had a reasonable basis to believe the requested language was consistent with grievant's condition and requested accommodation, as reflected in the events of the preceding 12 months, and as expressed in Dr. Blau's March medical opinion.

In this regard I note that Stock's notes of her March conversation with grievant included grievant's expressed surprise that she was expected to return to work and her statement that she "was not able to come to work" at that time. Although grievant denied making such a statement, Dr. Blau's unsolicited and unqualified March message that "I do not release her to work" is consistent with the message Stock assertedly received from grievant a couple weeks earlier. Moreover, in her contemporaneous exchanges with the Employer, grievant did not contest the conclusions of Dr. Blau's March letter. I also note that Dr. Blau's March report described that grievant was

[15] My conclusion rests only on the particular facts and context here and does not suggest that all requests for accommodation must be unambiguous or forceful. Indeed, in other circumstances, a simple "desk job" comment would easily meet the requirements of Article 32.1(B).

suffering essentially the same infirmities that led to Dr. Blau's January conclusion that grievant could not be released to work at that time. In light of the foregoing, I find Stock's version of the conversation consistent with other contemporaneous evidence and thus more reliable.

Most compelling, by March 31 grievant had been on leave for nearly one year when Dr. Blau's letter, citing numerous ailments, concluded that she was not released to work. In light of the foregoing, I am persuaded that the Employer understandably construed the March message as a request for indefinite leave, a request the courts have held that employers are not obligated to accommodate.[16] *Larson v. United Natural Foods West, Inc.,* 518 F. App'x 589 (9th Cir., 2013) (unpublished).[17]

Moreover, although it would have been a better practice to have immediately informed grievant explicitly of the significance of the requested language, Manfred's notification that her disability separation letter was being prepared preceded the separation letter. Significantly, grievant's email expressing appreciation for the "collaborative team" almost immediately following Manfred's message further supports the conclusion that grievant understood the significance of the requested language.[18] In addition, grievant's subsequent April 11 email requesting information about available benefits likewise suggests a lack of surprise with the disability separation. Under all the circumstances described above, I am persuaded that the Employer's understanding that grievant was seeking indefinite leave was congruent with the surrounding evidence and that the request for specific language that would support a disability separation thus did not violate any provision of Article 32.

[16] By contrast, the prior requests provided an anticipated date of return.
[17] The Employer attached a copy of this decision to its post-hearing brief.
[18] Her additional observation that she was following her treatment plan and was looking forward to serving the children reflects welcome and enthusiastic interest and optimism, but does not address the ability to return at any time certain, the critical issue at that point.

Reliance on the April 4 Letter

I am also persuaded that the Employer acted properly in reliance upon the subsequent April 4 revised letter from Dr. Blau. Initially, I recognize that employers are entitled to rely upon the expert medical opinions of treating physicians. *Alexander v. Northland Inn,* 321 F.3d 723 (8th Cir. 2003). Here there is no contrary evidence to dispute the validity of Dr. Blau's opinion and no basis to believe that Dr. Blau provided a medical opinion that was contrary to or inconsistent with her professional beliefs.[19] Indeed, although more explicit, the additional language in Dr. Blau's April letter is consistent with the clear and unqualified statement of March 31 that grievant was "…not released to work." In light of these circumstances I am persuaded that the Employer possessed a sufficient basis to conclude that grievant could not be accommodated "in any available position," as grievant would otherwise be on indefinite leave, an accommodation the Employer is not required to provide.

CONCLUSION

I am sympathetic to grievant's unfortunate plight, as she has devoted many years of service to the Employer and has been unable to work through no fault of her own. I also appreciate that the Union made a vigorous argument on her behalf. However, based on the record and for the rationale described above, I am unable to conclude that the Union met its burden of demonstrating by a preponderance of the evidence that the Employer's conduct with respect to grievant's April disability separation violated any of its Article 32 obligations. Accordingly, I will deny the grievance. In reaching the above conclusions I addressed only those matters I deemed necessary for a proper resolution, but did consider the well-expressed arguments of the Parties, including the authorities and evidence on which they relied, even if not expressly addressed in this Opinion.

[19] To the extent grievant may disagree with her doctor's opinion, EEOC has concluded that employees' opinions cannot override the contrary medical opinion of a treating physician. *Shad L. v. Brennan*, No. 0120140876, 2016 WL 3438593.

AWARD

CASE No. AAA 01-17-0002-3919

(Phyliss Williams-Pearson Grievance)

Washington Federation of State Employees

and

Washington State Dept. of Social & Health Services

Based on careful consideration of the evidence and the arguments of the Parties in their entirety, and for the rationale expressed in the foregoing Opinion, I award the following:

1. The grievance is denied.
2. Pursuant to Article 29 of the CBA, my fees and expenses shall be borne equally by the Parties.

Respectfully submitted: July 23, 2018

Richard L. Ahearn

Arbitrator

Seattle, Washington