

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
L. HERNANDEZ

) OTA Case No. 21017103
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OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: L. Hernandez
For Respondent: Sarah Fassett, Tax Counsel

S. HOSEY, Administrative Law Judge: On September 17, 2021, the Office of Tax Appeals (OTA) issued an Opinion for L. Hernandez (appellant) sustaining the action of respondent Franchise Tax Board (FTB) proposing additional tax of \$1,826 for the 2016 tax year.

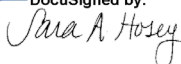
Appellant timely petitioned for a rehearing with OTA based on the newly submitted documentation attached to her petition for rehearing, showing the subtracted wage income on her 2016 Form 540 was properly deducted as Paid Family Leave (PFL). We conclude that the grounds set forth in this petition do not constitute a basis for a new hearing.

OTA may grant a rehearing where one of the following grounds is met and materially affects the substantial rights of the party seeking a rehearing: (1) an irregularity in the proceedings that prevented the fair consideration of the appeal; (2) an accident or surprise that occurred, which ordinary caution could not have prevented; (3) newly discovered, relevant evidence, which the filing party could not have reasonably discovered and provided prior to issuance of the written opinion; (4) insufficient evidence to justify the written opinion; (5) the opinion is contrary to law; or (6) an error in law that occurred during the appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Do*, 2018-OTA-002P; *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654.)


First, appellant has not shown that the documentation provided with the petition for rehearing was newly discovered, in that she could not have reasonably discovered or provided it prior to issuance of our written Opinion. The documentation is a Claim for Disability Insurance (DI) Benefits – Claimant’s Statement (DE 2501) Form that was submitted to the Employment Development Department (EDD) on March 29, 2016. Appellant has not shown why this form was not provided to OTA prior to the issuance of our written Opinion of September 17, 2021, over five years later.

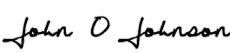
Second, appellant has not shown that this evidence is material and would change the result of our written Opinion. In the context of newly discovered evidence, courts have concluded that new evidence is material when it is likely to produce a different result. (*See Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, 728; *Hill v. San Jose Family Housing Partners, LLC* (2011) 198 Cal.App.4th 764.) The document provided by appellant is a claim for DI benefits showing that she applied for and was granted DI and that she requested and was granted four-weeks of leave under the Family Medical Leave Act/California Family Rights Act for baby bonding. Appellant did not have any evidence to support PFL payments before the issuance of our written Opinion and the new documentation provided does not support that she received PFL payments from the EDD either. Lastly, FTB provided updated documentation from the EDD in its reply showing that appellant in fact received DI and not PFL in the 2016 tax year.

In summary, we find that the grounds set forth in this petition do not constitute a basis for a new hearing and the petition for rehearing is denied.

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Sara A. Hosey
Administrative Law Judge

We concur:

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Josh Lambert
Administrative Law Judge

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John O. Johnson
Administrative Law Judge

Date Issued: 6/13/2022