

ATTACHMENT B

Staff Argument

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Salvador R. Velasquez (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated May 31, 2022. For reasons discussed below, staff argues the Board should deny the Petition and uphold its decision.

Respondent was employed by Respondent Human Services Consortium of the East San Gabriel Valley, dba LA Works (LA Works), at all relevant times, as its Chief Executive Officer (CEO). LA Works lost its funding due to Respondent's allegedly illegal conduct, which led to its inability to pay employer contributions to CalPERS, and a devastating reduction in retirement benefits for LA Works' current and future retirees. CalPERS determined that Respondent violated numerous Public Employees' Retirement Law (PERL) post-retirement employment restrictions because he worked as CEO of LA Works from January 1, 2003 to June 10, 2014; he worked in excess of 960 hours per year; and he received both regular earnings as CEO plus retirement benefits totaling \$283,000.

A hearing on Respondent's appeal took three days, and the resulting Proposed Decision was adopted by the CalPERS Board of Administration on July 13, 2022. Respondent submitted a Petition for Reconsideration (Petition) on August 12, 2022. Although Respondent's Petition purports to argue the merits, it is actually based on procedural grounds and the standard of proof applied by the ALJ. Respondent presented all these issues at hearing, and they were already denied by the ALJ in the Proposed Decision as discussed below.

First, Respondent argues that pursuant to Government Code section 20163, CalPERS may only recoup overpayments through a reduction from the member's pension. This reasoning is flawed because CalPERS is not seeking an "overpayment." CalPERS assessed a "penalty" pursuant to Government Code section 21220. As the ALJ noted in the Proposed Decision, section 20164 does not apply to the penalty the Legislature created by enacting section 21220. The same reasoning applies to section 20163. Both sections were enacted to prevent unlawful post-retirement employment. CalPERS is not limited to recouping the penalty from Respondent's pension benefits because it is a lawfully imposed penalty. Furthermore, section 20163 does not state CalPERS' only method of collecting an overpayment is through the reduction of the members' pension benefit. The plain text of section 20163 does not support Respondent's argument.

Next, Respondent makes procedural arguments. Respondent argues that CalPERS failed to file an Accusation which violated his due process rights. Respondent argues that CalPERS should have "born the burden of proof and persuasion from the beginning." Respondent's argument was already dismissed by the ALJ who held that CalPERS properly proceeded by way of Statement of Issues. The ALJ went on to note

“[h]ow the pleading is styled is of secondary importance; the important functional difference between an accusation and a statement of issues is which party bears the burden, and here that’s CalPERS. (Legal Conclusions 2-7.)” Thus, the issue presented by Respondent in the Petition has already been addressed and denied by the ALJ in the Proposed Decision adopted by the Board. For these reasons, Respondent’s novel arguments regarding CalPERS’ burden of proof should be ignored.

Respondent also argues that the Proposed Decision “misapplied amendments to the PERL retroactively...” The ALJ addressed and dismissed these arguments at hearing, holding that:

At the time Respondent retired in December 2002 and thereafter, section 21224 required appointments to be of a limited duration, and prohibited retirees from making more than employees performing comparable work or working more than 960 hours per year. The amendments to the statute, defining a year as a fiscal versus a calendar year, adding the word “temporary” before the word appointment, and describing how to calculate a retiree’s hourly pay to ensure the retiree is not making more or less than an individual performing comparable work are clarifying and can be applied retroactively to Respondent’s entire post-retirement. However, the June 27, 2012 amendment disallowing benefits, incentives, and compensation in lieu of benefits is a substantive change and not subject to retroactive application.” (Proposed Decision, pgs. 36-37.)

The ALJ also noted that “Respondent’s post-retirement employment violated section 21221, subdivision (h), even without retroactive application of the statute.” (Proposed Decision, pg. 37.)

All issues brought forth by Respondent in this Petition were fully addressed and denied by the ALJ in the Proposed Decision. Respondent presents no new evidence that would alter the analysis of the ALJ. The Proposed Decision adopted by the Board at the July 13, 2022, meeting was well reasoned and based on the credible evidence presented at hearing.

For all the foregoing reasons, Staff recommends that the Petition for Reconsideration be denied.

September 21, 2022

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