

ATTACHMENT B

Staff Argument

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Migterry Solinap (Respondent) was a Psychiatric Technician for Department of Developmental Services (Respondent DDS). By virtue of her employment, Respondent was a state safety member of CalPERS. Respondent stopped working for Respondent DDS October of 2018, due to a physical injury.

From December 2014 through July 2019, Respondent communicated with CalPERS on numerous occasions regarding industrial disability retirement (IDR). CalPERS informed Respondent about the requirements to apply for IDR, including the relevant processing timeframes. Respondent requested IDR estimates on numerous occasions, which CalPERS provided. Respondent also received counseling at the CalPERS regional office regarding filing for IDR. Furthermore, Respondent was provided various publications regarding retirement, including several copies of "*A Guide to Completing Your CalPERS Disability Retirement Election Application*" (PUB 35), which details the timelines, due dates and forms required to file for IDR.

On July 19, 2019, Respondent DDS informed Respondent of her option to retire and provided her with another copy of the PUB 35. Respondent did not file for IDR. On May 1, 2020, Respondent DDS applied for disability retirement on Respondent's behalf.

On May 4, 2020, Respondent submitted her application for IDR. In filing the application, disability was claimed on the basis of neurological (head) and orthopedic (neck, back, shoulders, hips, left lower extremity) conditions. Respondent requested an earlier retirement date of June 4, 2019.

Pursuant to Government Code section 21252, CalPERS approved Respondent for IDR effective May 1, 2020, the first of the month in which CalPERS received her application. CalPERS also used deductions from Respondent's allowance to repay Respondent DDS for Temporary Disability Advanced Payments (TDAP), which was previously paid to Respondent by Respondent DDS.

CalPERS determined Respondent did not qualify for an earlier disability retirement date because her failure to apply earlier was not a result of a mistake, inadvertence, surprise, or excusable neglect, pursuant to Government Code section 20160.

Respondent appealed CalPERS' determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). Two days of hearing were held on November 3 and 22, 2022. Respondent represented herself at the hearing. Respondent DDS did not appear at the hearing, and the matter proceeded as a default against Respondent DDS only, pursuant to Government Code section 11520.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing, CalPERS presented evidence, including Respondent's Customer Touch Point Report demonstrating that Respondent was counseled numerous times, provided disability retirement estimates, and provided many copies of PUB 35 over the years, all of which specifically informed Respondent that she should apply for disability retirement as soon as she feels she is no longer able to perform her job.

Respondent testified on her own behalf. Respondent testified that she was unaware about the process.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent did not meet her burden of proving that Respondent's delay was an error or omission attributable to mistake, inadvertence, surprise, or excusable neglect. The ALJ found that Respondent DDS notified Respondent in October 2018 that it could not accommodate her work restrictions. By then, Respondent had been fully informed of the requirements for filing a DR application, including receipt of all relevant publications. The ALJ noted:

Had Solinap reviewed the ... publications, she would have been aware of the need to apply for IDR as soon as she became unable to perform her usual duties as well as the impact of waiting more than nine months to apply.... Solinap's failure to review the publications in her possession and contact CalPERS with any follow-up questions constitutes a failure "to make the inquiry that would be made by a reasonable person in like or similar circumstances" and is not a correctable error or omission.

The ALJ further noted that Respondent communicated with CalPERS representatives many times and had many opportunities to seek clarification but failed to do so.

The ALJ denied Respondent's appeal. The ALJ found that CalPERS correctly determined the effective date of Respondent's disability retirement as May 1, 2020. The ALJ also found that CalPERS can use deductions from Respondent's allowance to repay DDS for TDAP.

For all the above reasons, staff argues that the Proposed Decision should be adopted by the Board.

January 17, 2023

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