

ATTACHMENT B

Staff Argument

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Alicia D. Thomas (Respondent) was a Plant Supervisor II for Respondent Long Beach Unified School District (Respondent District). Respondent stopped working for the District on July 2, 2018, due to a physical injury.

From November 2016 through August 2019, Respondent communicated with CalPERS on numerous occasions regarding disability retirement. CalPERS informed Respondent about the requirements for applying for disability retirement, including the relevant processing timeframes. Respondent requested a disability retirement estimate in August 2019, giving a projected retirement date of September 2019. On March 12, 2020, Respondent received counseling at the CalPERS regional office regarding disability retirement.

On June 26, 2020, CalPERS received a signed service pending disability retirement application from Respondent, requesting July 3, 2018, as her effective date of retirement. CalPERS approved the service retirement effective July 2, 2020. Pursuant to Government Code section 21252, CalPERS approved the disability retirement effective June 1, 2020, the first of the month in which CalPERS received Respondent's application. 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 this 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 October 4, 2021 and May 23, 2022. Respondent represented herself at the hearing. Respondent District did not appear at the hearing, and the matter proceeded as a default against Respondent District, 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 copies of Publication 35 on three different occasions, 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 confused about the process. Respondent also testified that although she received the CalPERS publications, she was not required to read them.

After considering all of 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:

failed to make the inquiry a reasonable person would make in similar circumstances. A reasonable person would consider the possibility that there might be a deadline for submitting an application for disability retirement.

Furthermore, the ALJ noted that Respondent communicated with CalPERS representatives many times and had many opportunities to inquire about a deadline, 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 June 1, 2020.

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

September 21, 2022

Preet Kaur
Senior Attorney