

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Christopher Warner (Respondent) worked for San Bernardino County as a Superior Court Judge. Due to his employment, Respondent is a member of the Judges' Retirement System II (JRS II). After serving just over fourteen years in judicial office, the Commission on Judicial Performance approved Respondent for disability retirement effective October 22, 2010, when he was 64 years old. As a result, CalPERS began paying Respondent a monthly disability retirement allowance equivalent to 65% of his final compensation, plus cost-of-living adjustments (COLAs), pursuant to Government Code section 75560.4.

While receiving his monthly disability retirement benefits, Respondent submitted a request seeking a refund of his JRS II monetary credits, without interruption to his monthly disability retirement benefits. Staff reviewed Respondent's request and the relevant Government Code sections. Based on their review, staff determined that the disability retirement benefit is provided in lieu of service retirement or any other benefit. Therefore, staff denied Respondent's request for reimbursement of his monetary credits without interruption of his monthly disability retirement allowance. In response, Respondent submitted a timely appeal of staff's determination and a hearing was held to determine whether Respondent was entitled to receive both a refund of his monetary credits and a monthly disability retirement allowance.

Pursuant to Government Code section 75522, a judge is eligible to retire upon attaining both 65 years of age and 20 or more years of service, or upon attaining 70 years of age with a minimum of five years of service. Government Code section 75521 states the following regarding early retirement:

- (a) A judge who leaves judicial office before accruing at least five years of service shall be paid the amount of his or her contributions to the system, and no other amount.
- (b) A judge who leaves judicial office after accruing five or more years of service and who is not eligible to elect to retire under Section 75522 shall be paid the amount of his or her monetary credits determined pursuant to Section 75520, . . . and no other amount. (Emphasis added.)

Government Code section 75560.4, which discusses disability retirement and the portion that applied to Respondent reads as follows:

- (a) A judge who retires for disability shall receive a retirement allowance in an amount equal to the lower of the following:
 - . . .
 - (2) Sixty-five percent of the judge's final compensation on the effective date of the disability retirement.

At the hearing, Respondent was represented by counsel, who presented oral argument explaining his position to the Administrative Law Judge (ALJ). After the hearing, the

parties submitted written closing briefs addressing the legal issue of whether Respondent should be granted a refund of his JRS II monetary credits without interruption to his disability retirement allowance. Based on the evidence submitted by the parties and the oral argument presented at the hearing, as well as the written briefs, the ALJ concluded that Respondent was not entitled to receive anything more than his monthly disability retirement allowance.

Specifically, after considering all of the evidence, the ALJ found that Government Code section 75560.4 defines the amount of retirement allowance that a judge, who retires for disability, shall receive. The ALJ noted that the legislature's use of the mandatory word "shall," coupled with the absence of a provision allowing a judge receiving a disability retirement to choose either a monthly retirement allowance or a refund of his monetary credits, supports the conclusion that the legislature did not intend to provide an election for judges retiring based on disability. In contrast, a judge who retires under Government Code section 75522 has the option to elect a monthly retirement allowance or the monetary credits, but not both. Thus, the ALJ determined that the Government Code sections governing early, regular and disability retirement lead to the unmistakable conclusion that only judges who qualify for regular retirement, pursuant to Government Code section 75522, are afforded an election between receiving their monetary credits, (per section 75520), or a monthly retirement allowance; whereas judges who retire early or based on disability do not have that election. Consequently, the ALJ denied Respondent's request for reimbursement of his monetary credits without interruption to his disability retirement allowance.

The Proposed Decision is consistent with the law and the facts. For the reasons stated above, staff argues that the Board should adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the decision of the Board.

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RENEE SALAZAR
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