

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

The issue in this case is whether any correctable error or omission was made by Janet Canzano (Decedent), or by her husband Donn Canzano (Respondent Canzano) which prevented her from filing for disability retirement.

Decedent was employed as a lecturer at California State University, Los Angeles (CSULA) from 1984-1989. According to CSULA records, Decedent left employment because her assignments ended and/or her contract expired. Prior to her death in July 2010, Decedent never applied for disability retirement. In August 2010, Respondent Canzano applied for survivor benefits, and asked CalPERS to consider a late disability retirement application.

In letters dated March 29 and August 22, 2011, CalPERS notified Respondent Canzano that his application for his late-wife's disability retirement was untimely pursuant to Government Code section 21154, and no correctable mistake had been demonstrated to allow CalPERS to accept the application pursuant to Government Code section 20160.

In 2008 (19 years after Decedent left employment with CSULA), Respondent Canzano called CalPERS to ask about his wife's eligibility for disability benefits. Customer Touch Point notes show that CalPERS mailed a disability retirement application to Decedent. Respondent Canzano admits they received the application in 2008, but no disability application was ever filed with CalPERS prior to Decedent's death.

Timeliness of an application for disability retirement is governed by Government Code section 21154. The application may be submitted at various times, but must be submitted during the member's lifetime. There is no authority to accept a disability retirement application after the member's death.

Respondent Canzano argued that he is entitled to file a late application for her disability retirement pursuant to Government Code section 20160 (the "mistake" statute). The Administrative Law Judge (ALJ) found that Respondent Canzano did not meet his burden of proof. Respondent Canzano and Decedent were aware of disability benefits at the latest by 2008 when they received the disability application packets, yet they never attempted to file for those benefits until several months after her death. Her death was tragic and unforeseen; however, the ALJ found that these circumstances do not warrant an exception under the law.

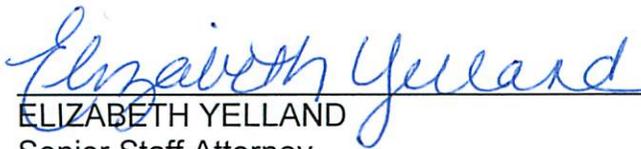
The ALJ also took official notice of the *Precedential Decision of Harvey Henderson*. "To find an estoppel here would in essence, grant CalPERS powers that were not ceded to it by the Legislature." (*Henderson*, p. 12.) Permitting Respondent Canzano to file a late disability retirement application on behalf of his wife would expand the scope of Government Code section 21154. "That is the task of the Legislature, not [PERS]." (*Henderson*, p. 12.)

The ALJ held that neither Respondent Canzano nor Decedent submitted her application for disability retirement in a timely fashion, and Respondent Canzano failed to establish grounds for acceptance of the untimely application.

The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board 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.

April 17, 2013


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