

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

The hearing on this case was completed June 11, 2013. Following hearing, a Proposed Decision was issued on July 16, 2013. The Decision denied John Fogerty's (Respondent) application for Industrial Disability Retirement (IDR). Respondent was represented by counsel at his hearing. The Board voted to adopt the Proposed Decision on September 18, 2013. Respondent submitted this Petition for Reconsideration on October 7, 2013.

The sole issue for resolution was whether Respondent timely submitted a complete application for IDR. The Administrative Law Judge (ALJ) found the following facts at hearing: Respondent submitted an incomplete IDR package on March 7, 2007. His IDR application was automatically cancelled because it was incomplete. Respondent was notified of the cancellation by mail. Respondent emailed and called CalPERS twice to find out why his IDR application was cancelled. Each time, CalPERS told him his IDR application was cancelled because we did not receive a completed packet with all necessary forms. He was also told that if he wanted to be considered for IDR, a new application must be submitted to CalPERS.

Respondent did not submit a new IDR application until 4 ½ years later, on November 2, 2011. CalPERS notified him that the second IDR application was denied based on Government Code section 20160, because Respondent had knowledge of the application process in 2007, and no correctable mistake had been made.

The ALJ agreed with CalPERS that a reasonably prudent person in Respondent's position would have inquired concerning any time limitations involved with submitting a new IDR application, and certainly would not have waited 4 ½ years to re-submit a new package. The ALJ also found that Respondent was a California Highway Patrol (CHP) officer, who advanced to the rank of Chief. He had gained sophistication in reading and interpreting laws and regulations in the course of employment. He knew, or reasonably should have known, that most governmental forms and/or applications have time limitations and that laws have statutes of limitations. The ALJ reasoned that Respondent is assumed to have known the contents, including the time limitations, of Government Code section 20160. The ALJ also found that Respondent did not establish the elements of estoppel.

The ALJ denied Respondent's appeal: "In sum, respondent cannot sit idly by for four and one half years and then blame CalPERS for a lack of information (the six month limitation period) that is clearly set forth in the Government Code."

Respondent bases his Petition for Reconsideration on the argument that he did not know there was a six month time limit to re-submit his IDR package. Respondent was represented by counsel at his hearing. He capably and fully presented his case and documentary evidence at hearing. He cross-examined CalPERS witnesses.

Respondent presumably disagrees with the ALJ's findings of fact, legal analysis and decision. The Proposed Decision documents that evidence was taken on the underlying facts, statutes pertaining to IDR and Government Code section 20160, and Respondent's

failure to re-submit his IDR package in a timely manner. Relevant exhibits were submitted by both sides for consideration by the ALJ. The ALJ simply found against Respondent. Respondent has not raised any new evidence or change in circumstances which would warrant a Petition for Reconsideration.

For all of the reasons stated above, staff argues the Board deny the Petition for Reconsideration and uphold its Decision. Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. Respondent may file a writ petition in superior court seeking to overturn the Decision of the Board.

November 20, 2013


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