

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

The issue in this case is whether the enhanced retirement benefit formula of 3% at 50 should be applied to the approximately 10 years Coral Hilder (Respondent) spent at the Department of Insurance (DOI) between 1987 and 1997 when determining her retirement benefits.

Respondent was an Investigator for Respondent DOI from 1987 to 1997. She was a member of Bargaining Unit 7. In 1997, she transferred to the California Department of Corrections (CDCR), and was associated with Bargaining Unit 6.

When Respondent began working for DOI in 1987, her retirement benefit formula was 2.5% at 55. It was enhanced to 3% at 55, pursuant to Senate Bill 400.

On June 19, 2002, Senate Bill 183 was enacted, adding Government Code section 21363.8 which provides that the retirement formula for members in Bargaining Unit 7 was enhanced to 3% at age 50 effective January 1, 2004. The enhancement was only applicable to those members who, on or after January 1, 2004, were employed by the state and were members of State Bargaining Unit 7.

Respondent believes her 10 years' of service credit at DOI should be subject to the enhanced 3% at 50 formula. CalPERS originally gave Respondent the enhanced retirement formula. This was incorrect; she should have been given the 3% at 55 formula for her DOI service time because she did not meet the qualifications of Government Code section 21363.8.

In June 2012, CalPERS received a tip on its fraud alert line that Respondent's retirement benefits were being calculated based on the incorrect benefit formula. CalPERS conducted an audit of Respondent's account as a result of this tip, and found that she was incorrectly receiving the enhanced benefit formula for her service at DOI.

CalPERS advised Respondent that to qualify for the 3% at 50 retirement benefit formula, she must meet the criteria under Government Code section 21363.8 which states that it only applies to peace officer members who, on or after January 1, 2004, are employed by the state and are members of Bargaining Unit 7. Since Respondent's employment with DOI ended in 1997, before the effective date of the formula enhancement on January 1, 2004, her service with DOI is not entitled to the 3% at 50 retirement benefit formula. Respondent appealed.

Prior to 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 handbook.

At the hearing, Respondent argued that her service at DOI was "related to" her employment at CDCR since both were peace officer positions, had essentially the same functions and she had no break in service. The Administrative Law Judge (ALJ) dismissed this argument because the clear terms of Government Code section 21363.8 and a clarifying memo from California Department of Human Resources (CalHR) state

that the jobs deemed to be "related" are those in the same Bargaining Units. Since Respondent changed from Bargaining Unit 7 to Bargaining Unit 6, the two job classifications were not "related."

Respondent also argued that she expended time and effort to plan her retirement, and based her retirement date on information she received from CalPERS over the years, including her Annual Member Statements and meetings with CalPERS staff. She claimed that had she known CalPERS' retirement estimates were incorrect, she would have transferred back to a job in Bargaining Unit 7, in order to comply with the statute.

The ALJ took Official Notice of the Precedential Decision *In the Matter of the Appeal of Decreased Level of Retirement Allowance of Harvey H. Henderson* (1998). Here, CalPERS knew that Respondent had transferred from DOI so her retirement benefit should have properly been calculated using the 3% at 55 formula. Nevertheless, CalPERS provided Respondent with incorrect retirement estimates and Annual Member Statements using the 3% at 50 formula. Respondent relied on this erroneous information when she filed for service retirement on November 14, 2011.

As in *Henderson*, Respondent's reduced monthly warrant of approximately \$400 to correct the benefit formula puts Respondent in a difficult financial situation. However, the ALJ found that because Respondent was not a member of Bargaining Unit 7 nor in a related managerial, supervisory, or confidential position as of January 1, 2004, her service with the DOI from 1987 to 1997 does not qualify for the enhanced retirement benefit formula of 3% at 50 set forth in Government Code section 21363.8.

The ALJ then considered Respondent's estoppel argument. The ALJ found that CalPERS corrected the error it made within six months of receiving the fraud tip; that CalPERS' error was the result of mistake, inadvertence or inexcusable neglect; and that the correction will not provide CalPERS with a status, right or obligation not otherwise available under the law. Therefore, Respondent did not establish that CalPERS should be equitably estopped from correcting her retirement benefit formula applicable to her DOI service.

The ALJ upheld CalPERS' decision to re-calculate Respondent's retirement pension using the 3% at 55 retirement formula for her DOI service. 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.

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