

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Lucky Lorena Meyer (Respondent) filed suit challenging her wrongful demotion on October 23, 2007, from Psychiatric Technician to Custodian at the Department of State Hospitals, Napa (DSH). Pending resolution of her wrongful demotion action before the State Personnel Board (SPB), Respondent retired from state service on April 11, 2008. Respondent ultimately prevailed in her lawsuit, her demotion was revoked, and she was awarded back pay. The SPB ordered DSH to pay Respondent the salary, interest and all benefits that would have normally accrued to her from the date of her demotion through March 15, 2011. The order effectively revoked Respondent's earlier retirement date.

Consequently, CalPERS amended its records to reflect that Respondent has been reinstated into state service through March 15, 2011, with a new retirement date of March 16, 2011. CalPERS then determined that Respondent was overpaid. Respondent appealed this determination. The issue at the hearing on Respondent's appeal was whether the retirement benefits that Respondent received between April 11, 2008 and March 15, 2011, resulted in an overpayment in retirement benefits that she must now reimburse to CalPERS. The hearing was held on August 5, 2014.

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 handbook. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

In the back pay decision issued January 5, 2012, the SPB stated:

Employees who receive retirement payments during any period following the effective date of a back pay award issued pursuant to an administrative hearing, shall reimburse CalPERS for all retirement payments received during the compensable back pay period (Government Code section 21198). Respondent may be responsible for reimbursing CalPERS for all retirement payment amounts that she received from April 12, 2008 through March 15, 2011.

The Administrative Law Judge (ALJ) in Respondent's appeal of CalPERS' determination found that, in light of the above language included in the back pay decision, Respondent was on notice as of January 5, 2012, that she might owe CalPERS for the retirement benefits she received from the date of her initial retirement (April 12, 2008) through the date she was directed by DSH to return to work (March 15, 2011). DSH subsequently paid Respondent her salary for the period from her demotion through March 15, 2011, and reported this payroll to CalPERS as required under the California Public Employees' Retirement Law (PERL). Respondent received service credit for those 35 months.

Government Code section 21198 provides: "Amounts paid to the person during retirement for any period after the date from which salary is awarded, shall be repaid by him or her to this system...."

The ALJ found that when DSH complied with the SPB order to reinstate Respondent to her Psychiatric Technician position and pay her Psychiatric Technician wages through March 15, 2011, this effectively reset Respondent's retirement date from the original April 11, 2008 date to March 16, 2011. The ALJ agreed with clear testimony provided by CalPERS staff that "You can't work and be retired at the same time." The change in Respondent's retirement date is the cause of the overpayment. Since Respondent received all back salary for this period, all of the retirement checks she received during the same period constituted an overpayment. The ALJ found that Respondent is required by law to repay those funds to CalPERS under Government Code section 21198.

The ALJ was not swayed by Respondent's estoppel argument. The ALJ found that, because there is direct statutory authority that applies to reimbursement of retirement benefit overpayments (Government Code section 21198), estoppel does not apply. To apply estoppel in this case would contravene express statutory authority. Moreover, the ALJ did not find that Respondent's back pay award was an error or omission resulting in mistake, inadvertence, surprise or excusable neglect. It was the result of a back pay order made by SPB in January 2012.

The ALJ found that CalPERS correctly determined that Respondent received retirement benefits during the same period that she was awarded back pay. The ALJ ordered that Respondent must repay CalPERS all retirement benefits she received through March 15, 2011.

Pursuant to Government Code section 11517(c)(2)(C), the Board of Administration is authorized to "make technical or other minor changes in the Proposed Decision." In order to avoid ambiguity, staff recommends replacing the date of March 15, 2012, with the date of March 15, 2011, in the "Conclusion" paragraph on page ten and on page eleven in the "Order" section of the Proposed Decision.

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, as modified.

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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.

December 17, 2014



ELIZABETH YELLAND
Senior Staff Attorney