

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Nellie Diaz (Respondent) was an employee of the Baldwin Park Unified School District (BPUSD). By virtue of this employment, Respondent is a miscellaneous member of CalPERS. Respondent was injured at work on more than one occasion, the first time in April 2005. She last worked on July 21, 2005. Respondent first contacted CalPERS in 2009 by telephone to ask about disability retirement. CalPERS staff was unable to reach her by letter or telephone until she filed a disability retirement election application in May 2010. That application was not complete and therefore not accepted by CalPERS. She submitted a second application in August 2010. That application was also not accepted because it was incomplete. In December 2011, Respondent filed a disability retirement election application by going to CalPERS' office and completing the application. In February 2012, the application was accepted and Respondent was granted disability retirement as of December 1, 2011.

Respondent requested an earlier effective date of her disability retirement of November 1, 2009. CalPERS denied that request and Respondent timely appealed that determination based on excusable mistake (Government Code section 20160).

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

A hearing was held on December 11, 2014, on the issue of the effective date of Respondent's disability retirement. The Administrative Law Judge (ALJ) was asked to determine the appropriate date for the Respondent's disability retirement to commence. Witnesses were heard and documentary evidence was presented. The ALJ issued a Proposed Decision on February 27, 2015, granting Respondent an earlier effective retirement date of August 1, 2010.

Respondent presented as her case her testimony that she did not understand her right to file for disability retirement while she was conducting her workers' compensation matter. She also argued that the requirements for the disability retirement election application were confusing and her disability made her obligations overwhelming, and therefore, her late application was the result of excusable neglect. CalPERS presented evidence that Respondent had many opportunities to avail herself of the assistance of CalPERS. At the hearing, Respondent requested that her disability retirement be effective on her last date at work at BPUSD in 2005.

The Proposed Decision concluded that Respondent's mistake in filing late for her disability retirement was, after the second application in August 2010, due to "surprise" as that term is contemplated in Government Code section 20160 subd. (a). Therefore, pursuant to Government Code section 21252 subd. (a), the ALJ determined that the effective date of Respondent's disability retirement will be August 1, 2010.

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.

May 20, 2015

for *Marguerite Seaborn*
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Senior Staff Attorney