

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Gloria Lopez (Respondent Lopez) was an employee of the Los Angeles County Office of Education (LACOE). By virtue of this employment, Respondent Lopez is a miscellaneous member of CalPERS. Respondent Lopez was injured at work on more than one occasion, initially on October 20, 2005. She last worked in June of 2007, and was separated on March 28, 2008. Respondent Lopez first contacted CalPERS to ask about disability retirement when she came to the CalPERS Glendale Regional Office (GRO) in May 2008. CalPERS staff informed her of the time limitation to file a disability retirement application and gave her the form. She did not want to file at that time. She called CalPERS on May 22, 2008, and was again given retirement information. On April 21, 2010, Respondent Lopez filed her first application for disability retirement. CalPERS sent a letter informing her that the application was incomplete, but received no response from Respondent Lopez. On November 28, 2011, Respondent Lopez filed a second application, and additionally requested an earlier effective date to her date of separation. In November 2012, the application was accepted, and Respondent Lopez was granted disability retirement as of November 1, 2011. CalPERS denied her request for an earlier effective date.

A hearing was held on January 16, 2015, on the issue of the effective date of Respondent Lopez's disability retirement. The Administrative Law Judge (ALJ) was asked to determine the appropriate date for Respondent Lopez's disability retirement to commence. Witnesses were heard and documentary evidence was presented. The ALJ issued a Proposed Decision on April 15, 2015, denying Respondent Lopez's request for an earlier effective date.

Respondent Lopez testified that she did not want to stop working, that she had many personal conflicts which made her life difficult at that time, including divorce and her Workers' Compensation case, and that her failure to file a disability retirement application sooner was inadvertent and excusable. CalPERS presented evidence that Respondent Lopez had many opportunities of avail herself of the assistance of CalPERS. She was informed of her rights and able to seek assistance to timely and completely file a disability retirement application, which she did not do. CalPERS presented opportunities to file a disability retirement application, and Respondent Lopez's failure to file an application was not a reasonable mistake or error.

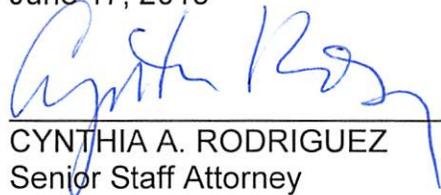
Prior to the hearing, CalPERS explained the hearing process to Respondent Lopez and the need to support her case with witnesses and documents. CalPERS provided Respondent Lopez with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Lopez's questions and clarified how to obtain further information on the process. Respondent Lopez was represented by an attorney.

The Proposed Decision concluded that Respondent Lopez's mistake in filing late for her disability retirement was not the result of excusable neglect or error.

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.

June 17, 2015



CYNTHIA A. RODRIGUEZ
Senior Staff Attorney