

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Carl Thomas (Respondent Thomas) applied for service retirement on September 20, 2010, and has been receiving his service retirement benefits since November 2, 2010. Thereafter, on October 19, 2011, Respondent Thomas filed an application for industrial disability retirement on the basis of orthopedic (left hip, low back, left knee and right ankle) conditions. By virtue of his employment as a Fire Captain with Respondent Department of Forestry and Fire Protection, Respondent Thomas is a state safety member of CalPERS.

In a letter to Respondent Thomas in November 2011, CalPERS requested information regarding the circumstances surrounding his retirement and the reason(s) for the delay in filing the application for industrial disability retirement. Respondent Thomas sent two letters of explanation to CalPERS containing different explanations. After reviewing the information, CalPERS determined that Respondent Thomas failed to demonstrate that the delay was a correctable error or omission as a result of inadvertence, mistake, surprise or excusable neglect. This appeal followed with the limited issue of whether Respondent Thomas should be allowed to submit a late application for industrial disability retirement.

Prior to the hearing, CalPERS explained the hearing process to Respondent Thomas and the need to support his case with witnesses and documents. CalPERS provided Respondent Thomas with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Thomas's questions and clarified how to obtain further information on the process.

At the hearing, three CalPERS staff members from the San Bernardino Regional Office testified. Two of the staff member witnesses met with Respondent Thomas prior to him submitting the service retirement application. The other witness met with Respondent Thomas after the service retirement application was filed but before the industrial disability retirement application was filed. All of the witnesses had electronic records of the information and documents provided to Respondent Thomas that were made contemporaneous to the meetings. One of the documents provided to Respondent Thomas prior to the service retirement application was a booklet entitled "A Guide to Completing Your CalPERS Disability Retirement Election Application," commonly referred to as "PUB-35."

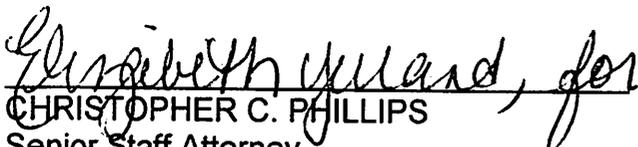
Respondent Thomas represented himself at hearing and testified on his own behalf. Despite the inconsistent reasons provided by Respondent Thomas for why he filed the industrial disability retirement application late, the Administrative Law Judge (ALJ) found that Respondent Thomas knew of the timing requirements and the policies and procedures about service retirement versus service retirement pending industrial disability retirement at the time Respondent Thomas filed for service retirement.

The ALJ determined that Respondent Thomas made an informed decision when he decided to file an application for service retirement, dated September 20, 2010, and that his rationale for not applying for industrial disability at that time did not constitute an error or omission that was the result of mistake, inadvertence, surprise, or excusable neglect within the meaning of Government Code 20160.

The ALJ concluded that Respondent Thomas'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.

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.

August 19, 2015

  
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Senior Staff Attorney