

ATTACHMENT C
RESPONDENT'S ARGUMENT

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Board of Administration
California Public Employees' Retirement System Legal Office
P.O. Box 942707
Sacramento, CA 94229-2707

AUG - 7 2015

Appeal to Proposed Decision

To the Board of Administration of the California Public Employees' Retirement System (CalPERS),

In the Proposed Decision issued by Administrative Law Judge Vallera J. Johnson, who carefully reviewed my hearings, she came to the conclusion that I should be denied my request to file a Disability Retirement Election Application based on industrial disability retirement. However, I believe there are facts that were omitted from her findings that still deserve careful consideration. There are instances from court testimony that were not brought to attention, and a few facts that are not correct.

I believe there were three main areas that attributed to my being denied. First was my being unable to communicate effectively the advice given to me by PERS representatives at the time I was being questioned. Second was the advice given to me by CalPERS representative Jesus Uranga. Third was the incomplete knowledge supplied to me by another PERS representative, Andrea Talamentez.

In order to support my position, I believe a brief review of the facts is necessary.

1. I met with three CalPERS representatives that helped me with the filing process. I believe that based on my specific needs, the representatives supplied me with a plan of action to file a late-filed IDR application. I was not advised to file an IDR, or an IDR pending application, but to wait until all of the documentation was together before filing. According to that information, which is backed up by court testimony and a careful review of the Statement of Issues, I should not be denied based upon the 30 day requirement as I did not file for an IDR, or an IDR pending application, but was given the option of filing a late IDR application.

2. On 09/08/2010, I met with Diana Behren and requested SR and IDR estimates, SR, pending IDR, and time frames. However, her Touch Point notes do not indicate that she explained the IDR or late-IDR processes, but were very specific about the forms to be submitted.¹

3. Administrative Judge Johnson claimed in her proposed decision that "a reasonable person who was aware that he could file a service pending industrial disability retirement application but that he could not submit the documentation of his industrial disability within 30 days of the date of the filing of the application would have inquired about what he should do."² I did. One week after I met with Diana on 09/08/2010, I met with Jesus Uranga, as evidenced by his touch points, dated 09/15/2010.³

4. After meeting with me, Jesus' Customer Touch Points documents are clear about mentioning member service vs. IDR, service pending IDR, and the application process, unlike Diana Behren's recorded notes. He also recorded that we went over time frames to process the application, and explained that when any part of the application is submitted, I have 30 days to submit a complete application.³

¹CalPERS exhibit 10, Customer Touch Point Report: p. 15, under 9/8/2010

²Proposed Decision by Administrative Law Judge Johnson, pg. 7.

³CalPERS exhibit 10, Customer Touch Point Report: p. 15, under 9/15/2010

5. I explained to Jesus my concerns about not being able to complete the application within thirty days. When I told him that I would not be able to get the medical reports and other forms completed within the thirty days, Jesus advised me to submit my service application now, and submit an IDR later when I had gotten all the documentation together. He further explained to me that I could file an IDR at any time, but that I needed to submit with the application a letter stating my reason for the late filing. As long as I have documentation from a doctor saying that I had been continuously seeing a doctor during that period, I could file for service retirement now and apply for an IDR application later.

6. This is supported by both statements in the Benefit Service Division Questionnaire⁴, that referenced a Government Code, and statements from the Court Transcript citing Jesus' testimony, which Administrative Judge Johnson failed to address during her proposal. Jesus testified at the hearing that making sure all the documentation is together and submitting the application all at once is what he tells all of his members to do, and that a member, after filing the application initially for service retirement, can then file an application for industrial disability retirement at any time, as long as they have documentation from doctors stating that they have been continuously seeing doctors during that period.⁵

This was revealed through a conversation between the witness Jesus Uranga, and Administrative Judge Johnson, who had requested that Jesus give testimony as to what advice he would have given to me at the time⁶. Jesus repeated numerous times that he recommends to all members that they turn in all their documentation at the same time.

7. I met again with Diana on 09/20/2010, not on 10/21/2010, as incorrectly indicated in the Proposed Decision. There are no touch points that record that I saw any PERS representative, let alone Diana Behren, on that date.⁷

What is clear from her notes from 09/20/2010 is that we talked about the service application process and discussed the option of changing from 3w to 4 3w/1 before the mailing of my first check. There is nothing in Diana's notes to suggest that we talked about IDRs, the IDR pending process, or the late IDR process other than a brief note that I was not filing for IDR at that time.

8. When I submitted my application for service retirement on 09/20/2010, I was acting under advice given to me by PERS representative Jesus Uranga, and was trusting his knowledge of the application process and his training as a retirement specialist that this was the best option for me.

9. On 08/31/2011, I met with state representative Andrea Talamantez. She did explain to me that I should have applied for my IDR at the time I applied for my service retirement. However, during her testimony, she restated her position that I did not have to file for an IDR at that time. She provided publication 35 and explained that I could apply as long as I submitted a letter explaining why I didn't apply at the time I retired⁸. She did not inform me, however, that the Code of Regulations would be in effect from the time that I submit my application and letter of explanation, nor did she provide me with a copy to reference for my letter of explanation.

10. During Andrea Talamantez's testimony, Administrative Law Judge Johnson admitted, based upon the testimonies of both Jesus Uranga and Andrea Talamantez, that I was allowed to file for an industrial disability retirement under the same conditions that I had submitted my application. Not

⁴CalPERS exhibit 8, second page.

⁵Transcript of Proceedings, Tuesday, April 14, 2015 Evening Session, pgs. 67-68.

⁶ Transcript of Proceedings, Tuesday, April 14, 2015 Evening Session, pg. 45.

⁷ CalPERS exhibit 10, Customer Touch Point Report: p. 15, under 9/20/2010.

⁸ Transcript of Proceedings, Tuesday, April 14, 2015 Evening Session, pgs.72-73, 77.

only the Judge, but the prosecutor, Mr. Phillips, also admitted that the application should have been submitted as a late-filed submission⁹.

11. Once I had the Government Code, I wrote a second letter of explanation that establishes the dates in which I document the medical evidence that supports that I had been continuously disabled from the date of my last day on pay status until the present.

12. Thus, I believe much of the earlier confusion in my case came from not being informed of the Government Code, or how it pertained to, or affected, my application. I propose that any member required to write a letter of explanation due to filing a late IDR application be given a copy of the Government Code as it pertains to the letter of explanation and any documents submitted after the fact. I had only received the Government Code after I had been denied, months after I had written my first letter of explanation¹⁰. Once I understood what the Government Code required of me, I drafted my appeal letter¹¹, which was more aligned with what was expected of a letter of explanation. I believe that if I had been aware of the Code beforehand, my first letter would have never been drafted. I had expressed this concern several times throughout multiple court sessions.

13. In conclusion, I would like to restate my position. I made an inquiry after my meeting with Diana Behren, and on September 20, 2010, made an informed decision based on the information given to me by an individual who was trained to supply specific and accurate guidance to the members of CalPERS. I was told by that retirement program specialist to wait until I had all the documentation for the IDR application and to file it all at once. I was assured that I could file for a service retirement at the time, and file an IDR application once I had all the paperwork together. This is exactly what I did.

Therefore, my case should not be judged on whether or not I changed my application within 30 days of filing for a service retirement, but on whether or not the PERS representatives, specifically Jesus Uranga and Andrea Talamantez who told me to submit the disability application and medical reports along with a letter of explanation, gave me incorrect information in filing a late IDR application. Based on testimony and the statements from the Benefit Service Division Questionnaire citing reference from the Government Code, there was no mistake that I made when I chose to file for a late IDR application. Therefore, Government Code 20160 should not apply to me, as there was no mistake made in my filing for a late IDR application.

Sincerely,


Carl Thomas

⁹ Transcript of Proceedings, Tuesday, April 14, 2015 Evening Session, pg.79

¹⁰ CalPERS Exhibit 7

¹¹ CalPERS Exhibit 5