ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Debbie Hinojosa (Respondent) was an employee of Fillmore Unified School District (District) as a Food Service Worker and is a miscellaneous member of CalPERS.

On January 29, 2009, Respondent Hinojosa was involved in an accident at work and suffered a back injury. Her last day with the District was on February 23, 2010.

Respondent Hinojosa first contacted CalPERS on July 12, 2010, by telephone, to request an estimate for disability retirement and service retirement. CalPERS mailed Respondent Hinojosa disability retirement and service retirement estimates.

In October 2012, CalPERS was contacted by a recruitment representative from the classified employees' union, requesting CalPERS to assist Respondent Hinojosa with her disability retirement application. On October 10, 2012, a CalPERS representative went to Respondent Hinojosa's house to help her complete the disability retirement application. The disability retirement application was filed that day.

On August 26, 2013, the application was accepted and pursuant to Government Code section 21252, Respondent Hinojosa was granted disability retirement as of October 10, 2012.

Respondent Hinojosa requested an earlier effective date of her disability retirement of February 24, 2010. CalPERS denied that request and Respondent Hinojosa timely appealed that determination based on excusable mistake (Government Code section 20160).

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

A hearing was held on July 29, 2015, on the issue of the effective date of Respondent Hinojosa's disability retirement. The Administrative Law Judge (ALJ) was asked to determine the appropriate date for Respondent Hinojosa's disability retirement to commence. Witnesses were heard and documentary evidence was presented.

Respondent Hinojosa testified at the hearing and stated she did not understand her right to file for disability retirement prior to October 2012. She also argued that she was taking multiple medications and her disability made her obligations overwhelming.

CalPERS presented evidence that Respondent Hinojosa was aware of her right to file for disability retirement in 2010 and had many opportunities to avail herself of the assistance of CalPERS.

The ALJ concluded that Respondent Hinojosa's appeal should be denied because the preponderance of evidence does not support that Respondent Hinojosa made a mistake, which was the result of inadvertence, mistake, surprise, or excusable neglect, that was correctable under Government Code section 20160.

The Proposed Decision is supported by the law and the facts. CalPERS 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.

October 21, 2015

for Marguerite Seabom

PREET KAUR
Staff Attorney