

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

The hearing on this case was completed over six days in April and May 2015. At the full and fair hearing, Respondent Roberta Almeida (Respondent) made all her arguments, which were considered and rejected. Respondent was represented by counsel at all phases of her hearing.

This case has an extensive record, including thousands of pages of exhibits, completion of oral testimony from numerous witnesses, submission of documents, and a multi-tiered briefing schedule which addressed all legal arguments. After all that, a Proposed Decision was issued on October 7, 2015. The Proposed Decision was in favor of CalPERS (dismissing Respondent's claim that she was acting as an employee, not an independent contractor, from July 1, 1998 through June 29, 2009), pursuant to the doctrine of laches. The Board voted to adopt the Proposed Decision on November 18, 2015. Respondent submitted this Petition for Reconsideration on December 1, 2015.

After all the evidence and briefs were considered, the Administrative Law Judge (ALJ) found that Respondent had notice of facts and circumstances which would put a woman of ordinary prudence and intelligence on inquiry as to her status no later than July 31, 2006. The ALJ summarized his factual findings over ten pages of the Proposed Decision. He then found that Respondent's appeal was barred by the affirmative defense of laches.

The elements of laches are unreasonable delay and either acquiescence to the act about which the plaintiff complains or prejudice to the defendant caused by the delay. Delay is unreasonable "when its purpose is to capitalize on the value of the alleged infringer's labor by determining whether the infringing conduct will be profitable." (*Magic Kitchen v. Good Things* (2007) 153 Cal.App.4th 1144, 1160-61)

The ALJ found that Respondent unreasonably delayed challenging her status as an independent contractor from July 1, 1998 through June 29, 2009. The ALJ found that she acquiesced to the very conduct about which she complains. Such acquiescence lulled CalPERS into relying on the status quo by continuing to enter into agreements with Respondent's business.

Respondent's Petition for Reconsideration has not raised any new evidence or change in circumstances which would warrant reconsideration. Nor has she identified any specific procedural errors which could demonstrate that the outcome at the hearing would have been different. Presumably, Respondent did not like the result after hearing. She disagrees with the ALJ's findings of fact and legal analysis, but it is clear from the Proposed Decision that evidence was taken on the underlying facts, her independent consulting history at CalPERS, and Respondent's claimed employment status. Extensive exhibits from both parties were submitted for consideration by the ALJ. Respondent simply ignores the evidence cited by the ALJ in support of his factual findings and legal conclusion.

Moreover, many of the exhibits Respondent now attempts to include in her Petition for Reconsideration were not submitted as evidence at hearing, although they could have been. In fact, many of these exhibits were included in Respondent's exhibit binders at hearing, but her attorney decided not to introduce them as evidence. Respondent is not allowed to add them to her Petition now because the record on appeal has already been completed. The ALJ simply found against Respondent.

Staff argues the Board deny the Petition for Reconsideration and uphold its decision.

Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. Respondent may file a writ petition in superior court seeking to overturn the decision of the Board.

December 16, 2015.

for Marquitta Sealow
ELIZABETH YELLAND
Senior Staff Attorney