

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Patrick J. Campbell (Respondent) worked as a Firefighter for the California Department of Forestry and Fire Protection (CalFire). He began working for CalFire in 2006. By virtue of his employment, Respondent is a state safety member of CalPERS subject to Government Code 21154.

Respondent applied for Industrial Disability Retirement (IDR) with CalPERS on June 25, 2014. In his application, Respondent stated that on or about October 23, 2011, he was walking the perimeter of a wild land fire, lost his balance, grabbed a boulder for support and injured his right shoulder when the boulder moved, causing him to fall. The initial diagnosis was right shoulder dislocation and probable rotator cuff tear. Respondent received ongoing medical treatment from 2011 to 2014, and underwent right shoulder arthroscopy in March 2012, May 2013 and December 2013. Workers' Compensation physicians classified Respondent as temporarily totally disabled during this period, and allowed him to return on modified duty, though none was available. Doctors advised Respondent that successful arthroscopy would allow him to make a full recovery and return to full duty. Medical records showed some improvement between surgeries, but Respondent was classified as permanent and stationary by his workers' compensation physicians on May 29, 2014, with the opinion that Respondent could not return to work.

On June 25, 2014, Respondent applied for IDR with CalPERS, and requested an effective retirement date of November 30, 2011, his last date on payroll with CalFire. CalPERS accepted Respondent's application but denied his request for an earlier effective date, setting the effective retirement date at July 1, 2014.

Respondent contacted CalPERS several times during the course of his medical treatment about his right to apply for IDR. Shortly after the second surgery was ordered, Respondent contacted CalPERS on or about November 30, 2012. Respondent contacted CalPERS again in September 2013 and October 2013 while waiting for his third surgery, which was completed December 28, 2013. On the basis of these inquiries, CalPERS determined that Respondent knew of his right to apply for IDR in 2012 and 2013, prior to applying for IDR in June 2014, and therefore could not avail himself of any legally cognizable excuse for not applying earlier.

Respondent appealed CalPERS' denial, exercising his right to a hearing before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH).

The ALJ presided over a one-day hearing on October 29, 2015, in San Diego, California. Counsel appeared on behalf of CalPERS and Respondent; CalFire did not attend. At issue on appeal was whether Respondent erred as a result of

mistake, inadvertence, surprise or excusable neglect correctable by Government Code 20160, which would entitle him to an earlier effective retirement date of November 30, 2011, as opposed to the July 1, 2014 date that CalPERS approved.

Government Code 21252 governs the effective date of a disability retirement application submitted after the member has ceased to be employed in state service. If the member applies for disability retirement within nine months of state service discontinuance, the application is deemed submitted on the member's last day on payroll. When submitted more than nine months after state service discontinuance, the application is deemed submitted on the first day of the month CalPERS receives the application.

Respondent sought an effective date of November 30, 2011, his last date on payroll. He applied for IDR on June 25, 2014. To be eligible for the November 2011 date, Respondent must prove that his failure to apply within nine months of that date, pursuant to section 21252(a), was the result of excusable neglect or other reasons listed in section 20160.


At hearing, Respondent testified that he underwent three surgeries in 2012 and 2013 in an effort to return to work. Though CalPERS cited Respondent's phone call inquiries to the agency in 2012 and 2013 as evidence that Respondent knew of his right to apply for IDR but simply chose not to, Respondent testified at hearing that he was simply trying to get information that he might need in case the shoulder surgeries were unsuccessful and he was unable to return to work. Respondent testified he did not review the information provided by CalPERS in any detail, and that he was planning on returning to work if he could. Once he learned he could not return to work, Respondent applied for IDR.

The ALJ granted Respondent's appeal. The ALJ held that "Mr. Campell made an error by believing that he was not disabled to the point where he should have filed an application for Disability Retirement within nine months of November 30, 2011, the date he discontinued state service." The ALJ relied upon Respondent's testimony and medical records to find that Respondent intended to go back to work after the shoulder surgeries and justifiably relied on statements by his treating and workers' compensation physicians that successful surgery would return him to full duty as a firefighter. Respondent's inquiries with CalPERS in 2012 and 2013 and decision to wait to apply for IDR, the Judge held, must be viewed in context of Respondent's intent and reliance on the above-referenced medical opinions.

Staff contends the ALJ properly recognized the issue and applied his interpretation of the relevant facts to the appropriate statutes. Thus, 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. Because Respondent Campbell has prevailed and CalFire chose not to appear, it is unlikely that either party will file a Writ Petition in the Superior Court seeking to overturn the Decision of the Board.

February 18, 2016



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