

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent David Grewing (Respondent Grewing) was employed by Respondent Department of Fish and Wildlife (DFW) as a Fish and Wildlife Assistant I. By virtue of his employment with DFW, Respondent Grewing was a state miscellaneous member of CalPERS.

Respondent Grewing filed for service pending disability retirement on March 23, 2011, with an effective retirement date of January 1, 2011. Thereafter, on May 24, 2011, Respondent Grewing requested a change in his retirement date from January 1, 2011, to January 11, 2011. The request was granted by CalPERS.

On August 23, 2011, Respondent Grewing submitted to CalPERS a request for an earlier retirement date of June 5, 2002. CalPERS denied Respondent Grewing's request for an effective retirement date of June 5, 2002, on the basis that Respondent Grewing had knowledge of the application process and that he had not established a correctable mistake within the meaning of Government Code section 20160 had occurred. Respondent Grewing filed a timely appeal.

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

Respondent Grewing represented himself and testified on his own behalf at the hearing. Respondent Grewing testified that despite his injury occurring in 2002, he did not contact CalPERS regarding disability retirement because he was "not instructed to do so by work comp or anyone." He further testified that he became aware that he could submit an application for disability retirement only after his workers' compensation claim settlement in 2008 became final. However, Respondent Grewing did not file for disability retirement at that time because he asserted that he was incompetent at the time.

The Administrative Law Judge (ALJ) found that Respondent Grewing's injury occurred in 2002 and that he waited nine years to submit an application for disability retirement. Throughout those nine years, Respondent Grewing maintained contact with CalPERS regarding his application for disability retirement. Additionally, in 2003, DFW provided a list of options available to Respondent Grewing, including filing for disability retirement. The ALJ found that Respondent Grewing was aware that he could file for disability retirement as far back as 2003, and that his assertion that he made a mistake by not knowing about disability retirement prior to 2011 was not persuasive. Further, the ALJ determined that failure by a CalPERS member to make the inquiry [about when he should file for disability retirement] that would be made by a person in like or similar circumstances does not constitute an "error or omission" correctable under Government Code section 20160.

The ALJ concluded that Respondent'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.

February 18, 2016



CHRISTOPHER PHILLIPS
Senior Staff Attorney