

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent James Arbogast (Respondent Arbogast) applied for service pending industrial disability retirement on April 8, 2011, and has been receiving his service retirement benefits since July 1, 2011. By virtue of his employment as a California Highway Patrol (CHP) patrol officer, Respondent Arbogast is a state safety member of CalPERS. Respondent CHP did not participate in Respondent Arbogast's appeal.

Due to a failure to provide all necessary information with respect to the industrial disability portion of the retirement application, CalPERS informed Respondent Arbogast on May 28, 2011, that additional information was needed or his industrial disability application would be cancelled. CalPERS did not receive any additional information and notified Respondent Arbogast on July 1, 2011, that his industrial disability application had been cancelled.

On March 5, 2013, counsel for Respondent Arbogast submitted another industrial disability retirement application to CalPERS. After reviewing Respondent Arbogast's file, staff determined that the March 5, 2013, application was not timely because it amounted to a request to change the retirement status from service to industrial disability. Pursuant to Government Code section 21453, a "...change of election shall be made within 30 calendar days after the making of the first payment on account of any retirement allowance..." Respondent Arbogast was notified of the determination on June 20, 2014. By letter dated July 16, 2014, Respondent Arbogast timely appealed.

At the hearing, counsel for Respondent Arbogast presented evidence that on August 16, 2011, and September 20, 2011, counsel's office submitted complete industrial disability applications to CalPERS. Despite CalPERS having no record of receiving either application, the Administrative Law Judge (ALJ) found Respondent Arbogast's evidence credible. Due to the timing of the August 16, 2011, application submission, the ALJ found section 21453 would not have been controlling and Respondent Arbogast's application was timely.

The ALJ therefore concluded that Respondent Arbogast's appeal should be granted and CalPERS staff should review his industrial disability application on its merits. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

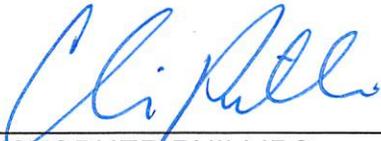
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Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. Since the member prevailed it is not likely that he will file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

March 16, 2016



CHRISTOPHER PHILLIPS
Senior Staff Attorney