

ATTACHMENT C
RESPONDENT'S ARGUMENT

1 Traci I. Park, (SBN 216245)
 E-mail: tpark@bwslaw.com
 2 Scott M. Nenni (SBN 280990)
 E-mail: snenni@bwslaw.com
 3 BURKE, WILLIAMS & SORENSEN, LLP
 444 South Flower Street, Suite 2400
 4 Los Angeles, CA 90071-2953
 Tel: 213.236.0600 Fax: 213.236.2700



5 Attorneys for Respondent
 6 CITY OF ALHAMBRA

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BOARD OF ADMINISTRATION
 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of Accepting the Late
 Application for Industrial Disability
 Retirement of Daniel Pfau:

Case No. 2014-0717
 OAH No. 2015010239

DANIEL A. PFAU,
 Respondent,
 and
 CITY OF ALHAMBRA,
 Respondent.

**RESPONDENT CITY OF ALHAMBRA'S
 ARGUMENT IN SUPPORT OF THE
 PROPOSED DECISION**

ALJ: Hon. Erlinda G. Schrenger
 Hearing Date: April 7 2016
 Time: 9:00 a.m.
 Hearing Location: Glendale

1 I. ARGUMENT IN SUPPORT OF PROPOSED DECISION

2 The Proposed Decision is well reasoned and supported by applicable law.

3 The central issue in this matter is whether Respondent Daniel Pfau's late application for
4 disability retirement was made within six months of a discovery of an error or omission resulting
5 from mistake, inadvertence, or excusable neglect. If Pfau cannot show a *timely* disability
6 retirement application after discovering some "error or omission," his application must be
7 rejected. Here, Pfau cannot show that his application was made within six months of learning of
8 any mistake or error, and the late application must be rejected. The evidence at the hearing
9 demonstrated that Pfau was fully aware that he filed a service retirement application, rather than a
10 disability retirement application, when he retired from the Alhambra Policy Department in 2008.
11 This is reflected in the findings made by the Proposed Decision.

12 On November 12, 2009, Pfau contacted CalPERS via telephone regarding the status of his
13 "disability retirement application." CalPERS informed him that no such application was on file,
14 and mailed a new application. Mr. Pfau admitted to this discussion with CalPERS, and testified
15 that he was "surprised" to learn that no disability application had been filed. Nonetheless, Pfau
16 did not attempt to change his status from service retirement to disability retirement for another
17 four years, finally filing his application on November 5, 2013. Again, this finding is supported by
18 the Proposed Decision.

19 As the Proposed Decision is well reasoned and supported by applicable law, it should be
20 upheld.

21 Dated: August 9, 2016

BURKE, WILLIAMS & SORENSEN, LLP

22
23 By: 

24 Traci I. Park
25 Scott M. Nenni
26 Attorneys for Respondent
27 CITY OF ALHAMBRA
28

PROOF OF SERVICE

I, Julie D. Anderson, declare as follows:

1. I am employed in the County of Los Angeles, State of California and am over the age of 18 and not a party to the within action. My business address is: 444 South Flower Street, Suite 2400, Los Angeles, California 90071.

2. On August 9, 2016 I served the foregoing document described as **RESPONDENT CITY OF ALHAMBRA'S ARGUMENT IN SUPPORT OF THE PROPOSED DECISION** on interested parties in this action by placing a true copy or original thereof enclosed in a sealed envelope addressed as follows:

Cheree Swedensky
Assistant to the Board
CalPERS Executive Office
PO Box 942701
Sacramento, CA 94229-2701
Fax: 916 795-3972

BY MAIL I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY FEDERAL EXPRESS I caused such documents to be served via Federal Express to the office of the addressee.

BY PERSONAL SERVICE I caused such envelope to be delivered by hand to the office of the addressee.

BY TELEFACSIMILE I caused such documents to be served via facsimile transmittal to the office of the addressee.

STATE FEDERAL

I declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct and if called upon, I could and would competently testify thereto.

Executed on August 9, 2016 Los Angeles, California.

JULIE D. ANDERSON