

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Diana Flores (Respondent) was an employee of California Department of Corrections – Substance Abuse Treatment Facility and State Prison – Corcoran (CDCR) as an Accounting Technician and is a miscellaneous member of CalPERS.

Respondent's last day on payroll with CDCR was March 1, 2011. However, Respondent did not contact CalPERS until March 14, 2013, by telephone, regarding disability retirement. At that time, she was assisted with questions regarding service retirement pending disability retirement. CalPERS also mailed Respondent a disability retirement application.

On April 10, 2013, Respondent submitted a request for a disability retirement estimate and CalPERS staff answered questions concerning disability retirement. On June 7, 2013, CalPERS sent Respondent disability and industrial disability retirement estimates.

On July 22, 2014, Respondent submitted a Disability Retirement Application on the basis of orthopedic conditions designating the effective date of retirement as "Exp of Benefits." Respondent's application for disability retirement was approved effective June 1, 2014. Respondent requested her disability retirement be backdated to March 1, 2011, the last day she was on payroll with CDCR. CalPERS denied that request and Respondent timely appealed that determination based on excusable mistake (Government Code section 20160).

A hearing was held on July 12, 2016, on the issue of the effective date of Respondent's disability retirement. The Administrative Law Judge (ALJ) was asked to determine the appropriate date for Respondent's disability retirement to commence. Witnesses were heard and documentary evidence was presented.

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

Respondent testified at the hearing and stated she thought she had to wait to apply for disability retirement until after she had been determined to be permanently disabled in her workers' compensation case. Respondent denied that she knowingly delayed filing her disability retirement application to maximize her retirement benefits. Respondent testified that she received the Disability Retirement Election Application Booklet from CalPERS and read it and that she received the January 15, 2013 Option letter from CDCR and the estimates sent by CalPERS in 2013.

CalPERS presented evidence that Respondent was aware of her right to file for disability retirement prior to 2014 and had many opportunities to avail herself of the assistance of CalPERS.

The ALJ concluded that Respondent's appeal should be denied because the preponderance of evidence does not support that Respondent made a mistake, which was the result of inadvertence, mistake, surprise, or excusable neglect, that was correctable under Government Code section 20160. Although the ALJ held the Respondent's testimony was credible, the ALJ found Respondent's "failure to inquire about the time lines for applying for disability retirement at the time precludes her from relying on Government Code section 20160 to seek an earlier disability retirement date."

The Proposed Decision is supported by the law and the facts. CalPERS 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.

September 21, 2016



PREET KAUR
Senior Staff Attorney