

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Michael Antonnucci (Respondent) was employed by the City of Upland (City) as a Fire Chief and is a safety member of CalPERS.

On May 8, 2014, Respondent submitted an Industrial Disability Retirement Application on the basis of orthopedic (back) conditions designating the effective date of retirement as September 30, 2011.

On July 8, 2014, CalPERS sent a letter to the City, posing questions concerning Respondent's request to change his retirement status from service to industrial disability retirement. The City responded by stating that Respondent did not have a disability impacting him at the time he retired and had not notified the City that he was retiring due to a disabling condition. The City explained that Respondent retired due to downsizing and reduction of benefits for executives.

CalPERS also sent a letter to Respondent concerning his request to change his retirement status. Although Respondent claimed he suffered from a disability at the time of service retirement, he admitted that he had not notified the City that he was retiring due to a disability. He explained that the City had denied his Workers' Compensation claim; therefore, he did not think he could file for industrial disability retirement.

Thereafter, CalPERS requested medical records from Respondent to determine whether Respondent was continuously disabled from the last day of employment. On January 12, 2015, CalPERS notified Respondent that his disability retirement application was being canceled because the medical records did not demonstrate he was disabled when he separated from employment on September 30, 2011.

A hearing was held on June 29, 2016, on the issue of whether Respondent's Industrial Disability Retirement Application was untimely and was not the result of a correctable "error or omission," as defined by California Government Code section 20160. The Administrative Law Judge (ALJ) was asked to determine whether CalPERS properly canceled Respondent's application for Industrial Disability Retirement. Witnesses were heard and documentary evidence was presented.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his 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 that he retired due to his disabling condition. He also testified that the City notified him he had to wait until his Workers' Compensation matter had resolved to submit his Industrial Disability Retirement application with CalPERS.

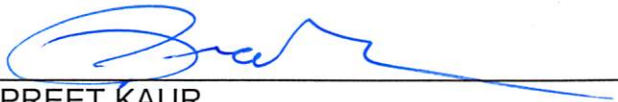
CalPERS presented the testimony of CalPERS staff and the Deputy City Manager of the City. CalPERS staff testified regarding her review of relevant documents, including the medical records provided by Respondent. CalPERS staff noted that even the medical records provided by Respondent, particularly the reports authored by Respondent's surgeon who performed the back surgery, stated that Respondent was fit to return to full duty beginning September 23, 2011.

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. The ALJ found Respondent "failed to establish by the preponderance of the evidence that he was 'incapacitated'."

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