

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Timothy Jones (Respondent Jones) was a Clinical Social Worker with Respondent Department of State Hospitals - Coalinga (DSHC). By virtue of his employment as a Clinical Social Worker with DSHC, Respondent Jones was a state safety member of CalPERS.

Respondent Jones applied for Industrial Disability Retirement (IDR) on the basis of a psychological condition on December 10, 2010. CalPERS approved Respondent Jones' application, and he was placed on the IDR roll effective August 16, 2011.

On June 11, 2014, CalPERS informed Respondent Jones that pursuant to Government Code section 21192 it was electing to have him examined to determine if he was still substantially incapacitated, or whether he should be reinstated to his former position with DSHC. On September 17, 2014, CalPERS notified Respondent Jones that based on competent medical evidence it was CalPERS' determination that he was no longer substantially incapacitated and was being reinstated to his former position with DSHC.

Starting in March 2013, CalPERS investigated allegations that Respondent Jones' IDR application was based on fraudulent information. CalPERS provided the results of its investigation to the Fresno County District Attorney's office. On July 1, 2014, the Fresno County District Attorney's office brought criminal charges against Respondent Jones that alleged, among other things, that Respondent Jones had unlawfully taken money and property from CalPERS in violation of California Penal Code Section 487(a).

On June 1, 2016, Respondent Jones pled nolo contendere in the criminal matter and as part of his plea agreement agreed to pay restitution to CalPERS in the amount of \$126,518.00. This amount equals the total IDR benefits Respondent Jones received from CalPERS through September, 2014.

Based on Respondent Jones' plea agreement, and the fact he agreed to pay restitution to CalPERS for IDR benefits he should not have received, CalPERS canceled Respondent Jones' IDR application. CalPERS also amended the Statement of Issues that was filed with the Office of Administrative Hearings (OAH) to add as an issue whether CalPERS is entitled to reimbursement for the overpayment of IDR benefits paid to Respondent Jones not included in the agreed to restitution amount. Specifically, CalPERS sought to recover the IDR benefits paid to Respondent Jones from October, 2014, through August, 2016. CalPERS determined that the amount of IDR benefits paid to Respondent Jones during this period equals \$77,358.54.

Respondent Jones appealed CalPERS' determinations, exercising his right to a hearing before an Administrative Law Judge (ALJ) with OAH. The matter was set for hearing on August 25, 2016. Respondent Jones was represented by attorney Richard P. Fisher throughout the appeal of this matter.

Prior to the hearing, Respondent Jones, through his attorney, notified CalPERS of his intent to withdraw his appeal of the first issue, whether he should be reinstated to his former position with DSHC. Respondent Jones officially withdrew his appeal as to this issue on August 8, 2016. Respondent Jones was informed that CalPERS still intended to proceed with the second issue at the hearing, whether CalPERS was entitled to the reimbursement of the IDR benefits provided to Respondent Jones through August, 2016.

Despite proper notice being given to Respondent Jones and Respondent DSHC, no appearances were made at the August 25, 2016, hearing by either respondent. Due to the failure to appear at the hearing, defaults of Respondent Jones and Respondent DSHC were taken by the ALJ. The matter proceeded as a default hearing against both respondents.

At the hearing, CalPERS introduced evidence that established Respondent Jones committed fraud in obtaining IDR benefits from CalPERS. In addition, CalPERS introduced evidence that established Respondent Jones' IDR application was approved for, and benefits were paid to him, in error. CalPERS also produced evidence that established the amount of benefits paid in error totals \$203,876.54. When considering the amount Respondent Jones agreed to pay to CalPERS as restitution in his criminal matter, the total amount paid to Respondent Jones in error totals \$77,358.54.

The ALJ found that CalPERS' error in approving Respondent Jones' IDR application was the result of mistake, surprise, inadvertence, and excusable neglect, as those terms are used in Code of Civil Procedure section 473. The ALJ also found that CalPERS timely sought to correct the error it made.

The ALJ concluded that CalPERS properly sought reimbursement of \$77,358.54 in IDR benefits Respondent Jones improperly received between October, 2014, and August, 2016.

The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision properly applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

November 16, 2016



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