

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

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

Respondent Rosemary Lopez (Respondent Lopez) was employed by Chaffey Joint Union High School District (District) as a Clerical Specialist II. By virtue of her employment, Respondent Lopez was a local miscellaneous member of CalPERS. Respondent Lopez service retired effective May 1, 2013, and has been receiving her retirement allowance since that date.

On May 10, 2013, Respondent Lopez submitted an application for service pending disability retirement (First Application) but did not submit all required supporting documents at that time. On August 8, 2013, CalPERS staff sent a letter to Respondent Lopez requesting the required physician's report on disability to be submitted within 30 days or the application would be cancelled. Respondent Lopez asked for additional time to comply and CalPERS staff extended the deadline to September 30, 2013. Respondent Lopez failed to submit the report and CalPERS cancelled the First Application on October 14, 2013.

On February 25, 2015, Respondent Lopez submitted another application requesting a change in retirement status from service retirement to disability retirement (Second Application). On March 9, 2015, and April 1, 2015, CalPERS staff sent Respondent Lopez a questionnaire regarding, among other topics, the reason she did not submit the required report with her First Application, which caused its cancellation. CalPERS did not receive a response to either questionnaire and the Second Application was cancelled on April 24, 2015.

On April 30, 2015, Respondent Lopez submitted yet another application requesting a change in retirement status from service retirement to disability retirement (Third Application). The Third Application was a re-submittal of the Second Application. On May 20, 2015, CalPERS staff again sent the questionnaire to Respondent Lopez. Respondent Lopez replied to the questionnaire claiming she had mailed the doctor's report (for the First Application), but CalPERS did not receive it. On August 24, 2015, CalPERS staff denied the Third Application because the Third Application was not timely and there was not an excusable error or omission that caused the First Application to be cancelled. Respondent Lopez timely requested an appeal.

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

Respondent Lopez represented herself at the hearing, submitted documentary evidence and testified on her own behalf. Despite clear evidence to the contrary, Respondent Lopez claimed the required physician's report on disability must have gotten lost in the mail and that she never received the questionnaires sent by CalPERS staff in response to the Second Application.

The Administrative Law Judge (ALJ) found that Respondent Lopez did not establish that she is entitled to relief based on an error or omission that was the result of mistake, inadvertence, surprise, or excusable neglect because an error or omission is not correctable if the member does not make the inquiry that would be made by a reasonable person in like or similar circumstances. Respondent Lopez was informed of the relevant deadlines and waited nearly a year and a half after the First Application was cancelled before filing the Second Application. Respondent Lopez did not make any inquiry to discover and respond to her mistake (failure to timely provide physician's report with First Application) within six months, as required.

The ALJ concluded that Respondent Lopez's appeal should be denied. The Proposed Decision is supported by the law and the facts. 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.

February 15, 2017

A handwritten signature in blue ink, appearing to read 'C. Phillips', is written above a horizontal line.

CHRISTOPHER PHILLIPS  
Senior Staff Attorney