

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

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

Respondent Hannah M. Clayborn (Respondent Clayborn) was employed by the Department of Parks and Recreation (Department), and by virtue of her employment, was a miscellaneous member of CalPERS. On February 2, 2013, Respondent Clayborn separated from service at age 59. She was eligible to retire, but did not do so. On October 13, 2015, after calling CalPERS to discuss retirement earlier that week, Respondent Clayborn filed an application for service retirement, requesting a retirement date of January 15, 2014. She later changed her request for a retirement date of February 3, 2013. CalPERS denied her request for an earlier retirement date and Respondent Clayborn appealed.

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

A hearing was held on February 7, 2017. Respondent Clayborn testified about her retirement decisions. CalPERS staff testified as to the process followed in reviewing the request. The record was closed on February 7, 2017.

Respondent Clayborn's testimony was that she did not have enough information about her retirement account funds to determine the optimal time to retire. Respondent Clayborn testified that she did not receive personal advice from CalPERS on the best time to retire. She was also unhappy with the fact that CalPERS began to provide the annual member statements on line instead of with yearly mailed letters after 2012. Respondent Clayborn informed the court that she had relied on CalPERS to provide graphs of benefit increases, and assumed that CalPERS pensions were similar to social security payments, without at any point attempting to verify her assumptions with CalPERS. She also testified that CalPERS staff was very helpful when she finally contacted CalPERS in 2015.

CalPERS staff testified that CalPERS had sent Respondent Clayborn information to make an informed choice in retirement. Staff identified the documents entered into evidence explaining to Respondent Clayborn that she was eligible for retirement and how her retirement was calculated. Staff testified that Respondent Clayborn had called CalPERS in the past (2005) and worked with staff concerning issues she had on prior service credit purchase requests, and that she knew how to contact and work with CalPERS staff for assistance. CalPERS submitted and the Administrative Law Judge (ALJ) received into evidence multiple documents, including the Statement of Issues with the California Government Code requirements for qualifying for a retirement date, and documentation of Respondent Clayborn's past work with CalPERS staff.

The ALJ found Respondent Clayborn's explanation of why she failed to apply in time for a 2013 retirement date to be insufficient to qualify as a reasonable mistake, and to lack

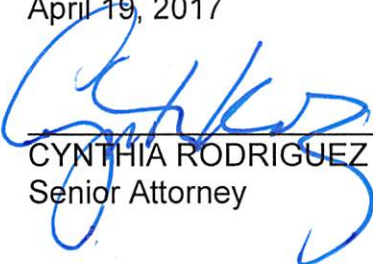
in persuasiveness. The ALJ determined that Respondent Clayborn's failure to read CalPERS information sent to her by mail and to act upon that information in choosing her retirement date was not reasonable. The ALJ found it clear that Respondent Clayborn was aware of her ability and right to contact CalPERS to ask for assistance if she did not have an understanding to proceed. The ALJ determined that the relevant information to assist Respondent Clayborn in making retirement decisions was available and Respondent Clayborn decided not to avail herself of this assistance until more than two years after she separated from employment. The evidence showed that CalPERS communicated with its members and offered significant information and contacts. The ALJ determined that Respondent Clayborn's failure to make inquiries about her retirement situation is not a correctible mistake under Government Code section 20160.<sup>1</sup>

After considering all of the documentary evidence and testimony of witnesses, the ALJ found that Respondent Clayborn failed to demonstrate that she is entitled to relief under Government Code section 20160. Accordingly, the ALJ found that Respondent Clayborn's CalPERS service retirement should commence on October 1, 2015. The ALJ concluded that Respondent Clayborn'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 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.

April 19, 2017



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CYNTHIA RODRIGUEZ  
Senior Attorney

<sup>1</sup> Government Code section 20160 reads (in pertinent part)

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist:

- (1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.
- (2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.
- (3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.