

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Michael Lionel (Respondent Lionel) was employed by the City of Vallejo as a Fire Department Captain. By virtue of his employment, Respondent Lionel was a safety member of CalPERS. On September 12, 2013, Respondent Lionel filed a service retirement application. CalPERS accepted that application and Respondent Lionel service retired effective November 14, 2013. On June 24, 2015, Respondent Lionel submitted a request to change status from service retirement to industrial disability retirement related to an alleged orthopedic condition of the spine. On December 3, 2015, CalPERS Benefit Services Division informed Respondent Lionel that his application for change in retirement status was not timely pursuant to Government Code section 21453, and was not a correctable error under Government Code section 20160. Respondent Lionel appealed that determination. A hearing was held on January 30, 2017. Respondent Lionel was represented by counsel at the hearing.

At the hearing, Respondent Lionel testified. He explained that he was injured before he filed the application for service retirement, but he did not want a disability retirement at that time because he intended to obtain other employment after retirement, and he did not want anyone to know he was on disability retirement. He also claimed that the City and CalPERS personnel misled him as to his obligations to file to industrial disability retirement in a timely manner as required by Government Code section 20160.

CalPERS presented a CalPERS staff witness who testified and introduced communications between CalPERS and Respondent Lionel. These documents established that prior to his service retirement, CalPERS notified Respondent Lionel of the opportunity to file for industrial disability retirement, and that one year later after his service retirement CalPERS again informed him of the information pertaining to filing an industrial disability retirement application when he went into the Walnut Creek Regional Center in person.

The Administrative Law Judge (ALJ) found CalPERS' documents and staff testimony to be persuasive as to the fact that Respondent Lionel was advised correctly as to his right to seek industrial disability retirement and the accurate time frames that needed to be followed. The ALJ determined that Respondent Lionel was correctly advised on multiple occasions and that there was no correctable mistake in his failure to follow the statutory requirements. Additionally, the ALJ determined that the statutorily stated limit of 6 months to correct an error, once the error is known to the Respondent, is a clear and firm deadline. The ALJ found that Respondent Lionel's testimony was not persuasive or credible and that Respondent Lionel was aware of the time limits, but failed to file timely despite repeated alerts from CalPERS and the employer. After considering all of the documentary evidence and the testimony of witnesses, the ALJ found that Respondent Lionel failed to establish that he is entitled to correct his untimely filing of a request to change from service retirement to industrial disability retirement. Accordingly, the ALJ found that the weight of the competent evidence

supported the conclusion that Respondent Lionel is ineligible to apply for industrial disability retirement.

The ALJ concluded that Respondent Lionel' 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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