

ATTACHMENT C

RESPONDENT'S ARGUMENT

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October 29, 2019

VIA FIRST CLASS MAIL

Cheree Swedensky
Assistant to the Board
CalPERS Executive Office
P.O. Box 942701
Sacramento, CA 94229-2701



Re: Respondent's Argument

Ref. No. 2019-0140

Dear Ms. Swedensky:

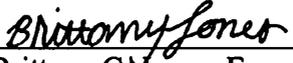
Respondent Jon Michaelson (“Respondent”) disputes Judge Karen Reichmann’s determination that Requirement Allotment and Day Differential shall not be included in calculating his final compensation. Specifically, Respondent takes issue with Legal Conclusion (8), which concludes that Day Differential does not qualify as special compensation under the category of Fire Staff Premium. Under California Code of Regulations, title 2, section 571, subdivision (a)(4), Fire Staff Premium is defined as “Compensation to rank and file local firefighters who are routinely and consistently assigned to administrative work during normal hours of employment that may differ from the work schedule of fire suppression personnel.”

During the hearing, Ms. Korthamar Wong confirmed through her testimony that Respondent’s Day Differential pay could fall under this category because he was routinely and consistently assigned to administrative work during his normal hours of employment. Moreover, his 40-hour work schedule differed from the work schedule of fire suppression personnel, which is a 56-hour shift schedule. Nevertheless, Judge Reichmann explained that “Respondent held the position of captain; he was not a rank and file firefighter” and as such, this category did not apply. However, this conclusion is not validated by any testimony or documentary evidence submitted in this case. No argument was advanced by either party that rank and file firefighters excluded EMS Captains; in fact, all firefighters are considered file firefighters regardless of rank. Judge Reichmann’s erroneous conclusion was reached absent any evidentiary support, and as such cannot be deemed a proper basis to exclude Day Differential from his final compensation. Furthermore, CalPERS expert Ms. Moua never claimed that Respondent was not a rank and file firefighter due to his status as Captain.

Respondent fervently disagrees with Judge Reichmann's conclusion that Day Differential does not qualify as special compensation under the category of Fire Staff Premium. This is because he was considered a rank and file firefighter who was consistently assigned to administrative work during his normal hours of employment which differed from the work schedule of fire suppression personnel. As such, Respondent respectfully requests that the CalPERS Board of Administration decline to adopt the Proposed Decision due to this egregious error.

Very truly yours,

MARTIN & VANEGAS
A Professional Corporation



Brittany C. Jones, Esq.

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In the Matter of Jonathan Michaelson
Ref No.: 2019-0140
OAH No.: 94229-2702

PROOF OF SERVICE

I, **Michelle Moore**, declare that I am employed in the City of Walnut Creek, County of Contra Costa, State of California, and am over the age of eighteen years and not a party to the within entitled action; my business address is 3100 Oak Road, Suite 230, Walnut Creek, California 94597. On **October 29, 2019**, I served the following:

Respondent's Argument

served in the manner(s) described below on the parties of said action, and addressed as follows:

Cheree Swedensky
Assistant to the Board
CalPERS Executive Office
PO Box 942701
Sacramento, CA 94229-2701

X **First Class Mail.** I caused said documents(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with the practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury, under the laws of the State of California, that the forgoing is true and correct. Executed on **October 29, 2019**, Walnut Creek, California.



Michelle Moore

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