

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED**

Mario U. Manansala, Jr. (Respondent) was employed as a Senior Engineer by Respondent Metropolitan Water District of Southern California (District). By virtue of his employment, Respondent was a local miscellaneous member of CalPERS.

Respondent submitted an application for service retirement on September 22, 2017, requesting a retirement date of December 5, 2017. On September 22, 2017, CalPERS sent Respondent a letter acknowledging receipt of his service retirement application and informing him that he may be entitled to disability retirement and should apply for disability retirement if he is unable to perform his job duties.

Respondent retired for service effective December 5, 2017 and has been receiving retirement benefits since then.

On January 31, 2018, Respondent contacted CalPERS by telephone and requested a 2017 disability retirement application. CalPERS mailed Respondent a copy of CalPERS' Publication 35, "A Guide to Completing Your CalPERS Disability Retirement Election Application" (Publication 35). In addition to providing detailed instructions for completing the disability retirement application and information concerning CalPERS health benefits, Publication 35 also instructs members when they may apply as follows:

You may apply for a disability or industrial disability retirement:

- While you are in CalPERS-covered employment; or
- Within four months of separation from CalPERS-covered employment; or
- At any time, if you "separated" from or left your job because of a disability and you have remained disabled since then; or
- While on military or approved leave.

On April 25, 2018, Respondent contacted CalPERS by telephone regarding a post service retirement disability retirement and health benefits in retirement.

Respondent signed a disability retirement application on August 31, 2018, which was received by CalPERS on September 5, 2018. On September 7, 2018, CalPERS sent Respondent a letter returning his application because he did not elect a retirement payment Option.

Respondent signed a disability retirement application on September 28, 2018, which was received by CalPERS on October 4, 2018. He requested an effective retirement date of December 5, 2017.

CalPERS requested information from Respondent and District concerning Respondent's request to change from service to disability retirement. After a review of the documents and information, and after considering Government Code section 20160 and other applicable precedents, CalPERS determined that no correctable mistake had been made which would allow CalPERS to change Respondent's service retirement to disability retirement. CalPERS notified Respondent and District of its determination and their rights to appeal by letter dated February 5, 2019.

In that letter, CalPERS informed Respondent that his request to change from service to disability retirement was denied and his late application for disability retirement could not be accepted because Respondent had been aware since September 2017 of the disability retirement application process and, therefore, was unable to establish that a correctable mistake was made pursuant to Government Code section 20160.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on December 12, 2019. Respondent represented himself at the hearing. The District did not appear at the hearing.

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

CalPERS' staff testified at the hearing that while an application for disability retirement may be made by a member of CalPERS under Government Code section 21154, an individual ceases to be a member of CalPERS when he or she retires. (Government Code section 20340.) If the individual failed to apply for disability retirement while he or she was a member, CalPERS must look at Government Code section 20160 to determine whether a retiree's disability application may be accepted.

CalPERS' staff also testified about Government Code section 20160 (a), which provides for the correction of errors and omissions made by a retiree as a result of a mistake, inadvertence, surprise, or excusable neglect as follows:

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.

Respondent had the burden of proof to present sufficient evidence to establish that he is entitled to relief under Government Code section 21060.

Respondent testified on his own behalf. Respondent testified consistent with his responses to CalPERS’ questionnaire. Respondent confirmed that he knew about his disability retirement option after receiving CalPERS’ letter in September 2017 and that he believed he had grounds to qualify for disability retirement but decided to file for service retirement because it required less paperwork. He also believed disability retirement would not give him any added benefits, because he saw that his retirement allowances for service and disability were the same.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that a correctable mistake was not made because Respondent failed to act as a reasonable person would in like or similar circumstances. The ALJ also found that Respondent could have asked CalPERS or his former employer how his election of service or disability retirement might affect his health insurance premiums and that a “reasonable person in that same situation, knowing that disability retirement was a real option, would have inquired as to this issue.” The ALJ further found that Respondent’s request to correct was untimely. Respondent was informed of his right to file for disability retirement in September 2017. Although he claimed he did not learn that disability retirement would reduce his health insurance premiums until January 2018, Respondent did not file for disability retirement until September 2018. In addition, the ALJ found “Respondent had an obligation to make a reasonable inquiry concerning the deadline [to change his service retirement to disability], which a reasonable person would have done.”

In the Proposed Decision, the ALJ concludes that Respondent did not establish that he made a legally correctable error or omission, or a timely filing, and that his appeal should be denied.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to “make technical or other minor changes in the proposed decision.” In order to avoid ambiguity, staff recommends replacing “subject to Government Code sections 21151 and 21154” with “subject to Government Code sections 21150 and 21154” on page 2, paragraph 2, line 4; and replacing the date “February 1, 2018” with “January 31, 2018” on page 5, paragraph 13, line 1 of the Proposed Decision.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board, as modified.

February 19, 2020

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Helen L. Louie  
Attorney