

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Ronald Archuleta (Respondent) was employed by Respondent Wasco State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR), as a Correctional Officer. By virtue of his employment, Respondent was a state safety member of CalPERS.

Respondent submitted an application for service pending industrial disability retirement to CalPERS on June 10, 2014 and has been receiving benefits since that time. On July 22, 2014, CalPERS staff wrote to Respondent, asking for additional documents in order to process his application for industrial disability retirement. The letter advised Respondent that if the necessary requested documents were not received by CalPERS within 21 days, then CalPERS would cancel Respondent's application for industrial disability retirement. Respondent failed to provide the requested documents. On August 23, 2014, CalPERS staff informed Respondent that his application for industrial disability retirement had been cancelled. The letter informed Respondent that he could resubmit a completed application.

Many years later, on October 30, 2018, Respondent submitted several documents to CalPERS and inquired regarding the status of his application for industrial disability retirement. CalPERS staff reviewed his file and sent a letter/questionnaire to Respondent, asking him to provide information and/or explain why he waited approximately four (4) years to pursue disability retirement. Respondent's response was received by CalPERS on April 19, 2019. After reviewing Respondent's letter, CalPERS staff determined that, pursuant to the provisions of Government Code section 20160 (Mistake Statute), no correctable mistake had been made by Respondent which would allow CalPERS to change his retirement from a service retirement to an industrial disability retirement.

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 17, 2019. Respondent represented himself at the hearing. Respondent CDCR 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.

Respondent testified on his own behalf. In June 2014, when he filled out the application for industrial disability retirement, Respondent identified a 2013 injury to his knee and stated, in relevant part, that he "[could] no longer perform [his] duties as a corrections officer with this [injury]." At hearing, Respondent admitted that, when he submitted the application, he could no longer perform his job duties. Accordingly, the ALJ found:

Respondent was aware of his possible disability when he filed for service pending industrial disability retirement in June 2014. In his application, respondent claimed he could no longer perform his duties as a correctional officer. Thus, when he completed his disability application in June 2014, he was aware of his right to file for disability retirement.

At the hearing, Respondent admitted that he knew, in 2014, that his original application for disability retirement had been cancelled because CalPERS had not received a completed Workers' Compensation Carrier Request (WCCR) form. He also admitted that his delay in not reapplying – after knowing of the cancellation of the original application - was “a mistake on my part.”

Documentary evidence and testimony from a CalPERS staff witness demonstrated that, after Respondent submitted his application, on July 22, 2014, CalPERS sent Respondent a letter, requesting that he provide additional forms. The letter stated, “If the forms are not received within 21 days from the date of this letter, your application will be cancelled.” Respondent provided some, but not all of the requested and necessary forms. On August 23, 2014, CalPERS wrote to Respondent and advised him that his application for disability retirement had been cancelled due to his failure to provide all of the requested forms.

On August 28, September 3, and December 11, 2014, Respondent contacted CalPERS and spoke with CalPERS staff. On each occasion, staff informed Respondent that his application for disability retirement had been cancelled due to a failure to provide all necessary, requested forms, and that, if he wanted to apply for disability retirement, he could reapply by submitting a new, completed application and all of the required documentation.

On November 7, 2014, Respondent contacted CalPERS and asked for a disability retirement packet. On the following day, CalPERS sent Respondent the publication, “A Guide to Completing Your CalPERS Disability Retirement Election Application” (PUB – 35), which contained instructions on how to complete an application, a blank application and all forms which would need to be completed and submitted to CalPERS in order to process an application.

Approximately four (4) years later, on October 30, 2018, Respondent sent some of the forms required when applying for disability retirement. Respondent did not submit a new application. Then, on December 12 and 20, 2019, Respondent submitted some more completed forms.

In response, CalPERS staff reviewed Respondent's file. In March 2019, CalPERS staff advised Respondent that his file contained only the original 2014 application, no other application had been submitted. As a courtesy, staff advised Respondent that they would “re-key” his original application and consider it in connection with the forms that he had submitted in October and December 2018.

On April 4, 2019, CalPERS staff wrote to Respondent, asking him to explain why he had taken no action since 2014 to reapply for disability retirement. In his response, Respondent stated that he was “under the impression” that he had to wait until he was deemed “permanent and stationary”, with respect to his claim for Workers’ Compensation benefits, before he could apply for disability retirement.

Government Code section 21154 provides that a CalPERS member can submit an application for disability retirement “while the member is in state service” or “within four months after the discontinuance of the state service of the member...” Respondent’s original application for service pending industrial disability retirement was submitted in a timely manner.

However, because Respondent did not reapply for disability retirement until years after his original application had been cancelled for failure to provide necessary, requested documents, the only way that CalPERS could accept and process such an application is with a showing that meets the criteria set forth in Government Code section 20160. Section 20160 provides, in relevant part, 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.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. In the Proposed Decision, the ALJ concluded as follows:

Respondent did not explain why he waited over four years after the cancellation of his disability application to file a subsequent disability application. He did not demonstrate that his failure to file a second disability application was the result of mistake, inadvertence, surprise, or excusable neglect. CalPERS’ staff was in frequent contact with respondent and provided new disability application forms to him along with directions on how to properly file the application.

As a result, the ALJ held that Respondent did not establish that he should now be allowed to seek disability retirement, which would thereby entitle him to retroactively change his retirement status and therefore denied Respondent's appeal. For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

March 18, 2020

Rory J. Coffey
Senior Attorney