

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Larry D. Peoples (Respondent) worked for the California Department of Toxic Substances Control as a Staff Services Analyst from January 5, 1993 to April 18, 2001. He was a member of CalPERS and enrolled in the Second Tier formula for retirement benefits.

Respondent returned to state service as an Office Technician at the Department of Consumer Affairs (DCA) on October 24, 2001. When he was hired, DCA did not give Respondent the option to choose a retirement formula tier and designated him as Second Tier contrary to Government Code section 21070.5.

From 1993 to 2018, Respondent was designated in the Second Tier formula. Consequently, he made no contributions to his pension account.

Respondent retired effective January 31, 2018. CalPERS' automated system calculated Respondent's retirement benefits under First Tier formula based on his October 2001 date of hire and the absence of an election to opt into Second Tier. CalPERS sent Respondent a letter dated February 1, 2018, informing him that his monthly pension amount would be \$1,800.35 (less any authorized deductions) under the First Tier formula.

Thereafter, CalPERS reviewed Respondent's retirement and determined that his retirement benefit was underfunded because he was receiving benefits under the First Tier formula, but he had not paid any contributions because he was misreported under the Second Tier formula. CalPERS informed Respondent by letter dated July 16, 2018, that his monthly pension payments were calculated using a First Tier formula, but his account was not funded as a First Tier member because he had not paid any member contributions.

CalPERS sent Respondent an election form which gave him options to correct the error. Respondent's retirement account was underfunded by \$37,123.58. He was given the option to stay in the First Tier formula and to either pay the underfunded amount in a lump sum payment or to make contributions of \$310.10 for 180 months. Respondent was also given the option to elect Second Tier and to repay the overpayments he had received since his 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 March 2, 2020. Respondent did not appear at the hearing nor did Respondent DCA.

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.

At the hearing, CalPERS established that it properly served both Respondents with a Notice of Hearing. Consequently, the matter proceeded as a default hearing against both Respondents pursuant to Government Code section 11520, subdivision (a).

After considering all of the evidence introduced by CalPERS, as well as arguments by CalPERS and the arguments made by Respondent in his letters, the ALJ denied Respondent's appeal. The ALJ found that under the PERL, CalPERS must correct the Department's error of enrolling Respondent into Second Tier and CalPERS' error in paying Respondent's retirement benefit under First Tier. If CalPERS were to leave Respondent in the tier he should have been enrolled in, his retirement account is underfunded by \$37,123.58. If CalPERS were to move Respondent to the tier he was erroneously enrolled in, his monthly benefit would decrease from \$1,800.05 to \$1,126.44, and Respondent would be responsible for reimbursing CalPERS the overpayments he received since he retired in January 2018.

The ALJ rejected Respondent's argument that he should not be made to pay for others' mistakes. The ALJ explained that Respondent's argument implies that he should continue to benefit from others' mistakes. Respondent is receiving a pension benefit to which he did not contribute and to which he did not earn. The ALJ further explained that Respondent is, in effect, making withdrawals on a retirement account with a zero balance. There is no dispute that the mistakes that led to this result were not Respondent's, but to allow him to continue to collect a benefit that he did not earn puts the burden of an underfunded retirement account on the CalPERS membership.

In the Proposed Decision, the ALJ concluded that CalPERS must correct the error. It should process the Contribution Agreement that would correct the error by allowing Respondent to fund his retirement account in the Tier One formula over a period of 180 months.

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

April 22, 2020

Austa Wakily
Senior Attorney