

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Marilyn Rowe (Respondent) worked as a Registered Nurse at Department of State Hospitals - Patton (Respondent DSH). By virtue of her employment, Respondent was a state safety member of CalPERS. Respondent last worked for Respondent DSH on April 10, 2009.

Respondent filed a service retirement election application on June 30, 2011, and she service retired effective June 28, 2011. After being service retired for close to seven years, Respondent filed an application for industrial disability retirement on May 4, 2018. On June 20, 2018, CalPERS cancelled the May 4, 2018 disability retirement application because Respondent did not provide all of the requested information and documents.

Respondent submitted a second application for industrial disability retirement on July 23, 2018. Because there was no correctable mistake causing the seven-year delay between Respondent's service retirement and application for industrial disability retirement, CalPERS cancelled the July 23, 2018 industrial disability retirement application by letter dated October 4, 2018.

Through her attorney, Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH).¹ A hearing was held on March 2, 2020. Neither Respondent nor Respondent DSH appeared at the hearing. Due to both parties' failure to appear, the case proceeded as a default under Government Code section 11520.²

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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 in support of its determination. Staff explained that Respondent ceased to be a member of CalPERS when she retired for service in 2011, as required by section 20340(a). Because Respondent was no longer a CalPERS member after retiring, CalPERS could not accept Respondent's industrial disability retirement application under section 21154 absent a correctable mistake by Respondent under section 20160.

CalPERS staff's testimony explained Respondent's delay from 2011 to 2018 did not result from a correctable mistake. Respondent had a long history of communication with CalPERS between 2011 and 2018. CalPERS staff explained that Respondent's communications with CalPERS included discussions and written correspondence

¹ Immediately after filing the appeal with CalPERS, Respondent's attorney withdrew from representation.

² All future statutory references will be to the Government Code unless indicated otherwise.

regarding disability retirement. CalPERS sent Publication 35, the Guide to Completing Disability Retirement (PUB-35), to Respondent in 2012. CalPERS sent PUB-35 to Respondent three more times in 2013.

CalPERS staff also explained that Respondent discussed disability retirement with CalPERS several times by telephone. CalPERS' Customer Touchpoint Notes (CTP Notes), which CalPERS uses to log its interactions with individual members, reflect numerous contacts with Respondent regarding disability retirement. The CTP Notes indicated that Respondent contacted CalPERS to discuss a possible industrial disability retirement at least 11 times between her service retirement in 2011 and her first application for industrial disability retirement in May 2018 (four times in 2012, five times in 2013, once in 2015, and once in 2018).

CalPERS staff's testimony detailed the numerous contacts and correspondence between CalPERS and Respondent regarding disability retirement. Respondent thus had the documents and information necessary for her to submit a disability retirement application yet neglected to do so. Hence, CalPERS staff testified that Respondent's delay in applying for disability retirement did not constitute a mistake correctable by section 20160.

After considering all of the evidence introduced, the ALJ denied Respondent's appeal. Respondent service retired in 2011, and she corresponded with CalPERS countless times regarding disability retirement between 2011 and 2018. CalPERS also mailed Respondent copies of PUB-35 four times. Nonetheless, Respondent waited until 2018 to file her application for industrial disability retirement. That delay was not the result of a mistake correctable by section 20160. Accordingly, the ALJ denied the appeal, and determined that CalPERS properly cancelled Respondent's 2018 disability retirement application.

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

June 17, 2020

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Senior Attorney