

ATTACHMENT B

Staff Argument

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Rodney Rowe (Respondent) was a Head Custodian I for Ventura Unified School District (Respondent District). By virtue of his employment, Respondent is a school miscellaneous member of CalPERS.

On May 29, 2020, Respondent District submitted an Employer-Originated Disability Retirement Application (DR) on Respondent's behalf. The application stated that Respondent's last day on payroll was May 5, 2020. On May 29, 2020 and June 19, 2020, CalPERS requested that Respondent provide documents supporting his disability. Respondent never responded.

Instead, on June 25, 2020, Respondent submitted a Service Retirement Application (SR) through Member Self-Service, with an effective retirement date of May 5, 2020. Respondent retired for service effective May 5, 2020, and has been receiving SR since July 6, 2020. On June 25, 2020, CalPERS advised Respondent of his right to apply for an SR Pending DR Application. Respondent did not file an SR Pending DR Application at that time.

On July 10, 2020, CalPERS informed Respondent that his employer's application for DR was canceled due to his failure to provide further information. The letter also states that "if [respondent Rowe wishes] to re-apply for retirement at a later date, it will be necessary for [him] to complete a new application at that time."

On January 27, 2021, CalPERS received an SR Pending IDR Application from Respondent, with a requested retirement date of May 6, 2020. In filing the application, disability was claimed on the basis of orthopedic (knees, carpal tunnel) conditions.

Because Respondent submitted this application after he service retired, it was considered a request to change from SR to DR. On June 1, 2021, CalPERS requested information from Respondent and Respondent District regarding Respondent's request to change from SR to DR, through his late filing of the DR Application, to determine if a correctable mistake was made. Both Respondents submitted additional information.

After a review of Respondent and Respondent District's responses and additional information, and after considering Government Code section 20160 and other applicable precedents, CalPERS determined that the application was filed late, and no correctable mistake had been made which would allow CalPERS to change Respondent's service retirement to an industrial disability retirement.

CalPERS' determination was based on the following facts:

(1) From May 11, 2017 through January 8, 2021, Respondent called CalPERS 15 times to inquire about DR and was provided assistance and information regarding the DR process, timeframes to submit the required documents, and informed of the consequences if his application was cancelled;

(2) CalPERS mailed "*A Guide to Completing Your CalPERS Disability Retirement Election Application*" (PUB-35) to Respondent on 10 separate occasions. PUB-35 instructs members to apply for DR as soon as they think they may be disabled; and

(3) On May 29, 2020, Respondent District submitted an Employer-Originated DR Application on behalf of Respondent, but the application was cancelled on July 10, 2020, because Respondent did not follow up with required documents and information.

Respondent appealed CalPERS' 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 October 31, 2022. Respondent represented himself at hearing. Respondent District did not appear at the hearing. The ALJ found that the matter could proceed as a default against Respondent District, pursuant to Government Code section 11520.

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 hearing, CalPERS staff testified regarding the underlying facts and determination made.

Respondent testified on his own behalf that he called CalPERS numerous times to ask about DR and to request publications because he did not understand what staff were telling him during the phone calls. Respondent testified that he suffered from a learning impairment, making it difficult for him to understand the information CalPERS furnished to him.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent's appeal. The ALJ held that Respondent's "profound confusion and lack of understanding of what he was being advised led to his having an imperfect knowledge of the process." The ALJ reasoned that based on Respondent's background and mental state, Respondent made erroneous conclusions regarding the process and his errors were in good faith.

The ALJ found that Respondent met his burden of establishing by a preponderance of the evidence that he made errors or omissions as a result of mistake, inadvertence, surprise, or

excusable neglect correctable by Government Code section 20160, which would allow CalPERS to accept his late DR application for review.

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

January 17, 2023

Preet Kaur
Senior Attorney