

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

April Myres (Respondent) was brought into CalPERS membership on April 18, 1998, through her employment as a Deputy Sheriff with the City and County of San Francisco (Respondent City). By virtue of her employment, Respondent was a local safety member of CalPERS.

Sometime before August 2015, Respondent worked at San Francisco County Jail. While there, she entered into a relationship with Antoine Fowler (Fowler), an inmate detained at the Jail. She knew the relationship violated City policy, and so attempted to hide the relationship from coworkers and supervisors. Once Fowler was released from jail, they continued their relationship until it ended shortly before March 25, 2016.

On March 25, 2016, Respondent's house was burglarized. During the investigation, Respondent never mentioned that Fowler was a suspect. On the claim submitted to her insurer, Respondent listed a Service Firearm and radio issued to her by Respondent City as stolen property, even though she knew they were not her property.

On January 19, 2017, the FBI filed a criminal complaint against Respondent in the US District Court, Northern District of California. Among other things, the complaint alleged that Respondent committed mail and wire fraud by submitting a fraudulent insurance claim following the alleged robbery.

On February 2, 2017, more than 10 months after the burglary, Respondent's Service Firearm was found in a car driven by Fowler. The same day, law enforcement officers searched Respondent's residence and discovered three of the personal items she listed as stolen on her insurance claim were actually still in her possession.

On February 14, 2017, Respondent submitted an application for service retirement. She retired for service effective February 17, 2017, and has been receiving service retirement benefits since March 2017.

On April 11, 2017, a grand jury returned an indictment that became the operative pleading against Respondent in her criminal trial. The indictment charged her with mail and wire fraud, specifically: devising, engaging and participating in a scheme to defraud an insurer in connection with her claims of theft, vandalism and missing property at her residence. The grand jury found that Respondent caused her residence to appear burglarized on March 25, 2016; made false statements to multiple law enforcement agencies and her insurer about the purported burglary; fraudulently claimed her Service Firearm was stolen; and used mail and wire communications in interstate commerce in the commission of these acts. The grand jury also found that Respondent knew Fowler possessed her Service Firearm but concealed this information by making false and fraudulent statements to law enforcement and her insurance company; and by omission

and concealment of Fowler's habitation at her residence and failing to report Fowler's illegal possession of a firearm.

On June 26, 2019, after a jury trial, Respondent was found guilty of mail and wire fraud, both felonies. The Presiding Judge viewed her criminal convictions as inextricably intertwined with her employment for Respondent City:

It cannot be understated that [Respondent] was a Sheriff's Deputy at the time of the incident offense. One cannot separate her job in law enforcement from her conduct. She was trusted by the [Respondent City] and by her community, the community which she had taken an oath to protect.... [Respondent] should have known better. When those sworn to uphold the law become the very ones who break the law, the entire criminal justice system is undermined.

On November 9, 2021, CalPERS determined that Respondent's two felony convictions arose out of the performance of her official duties, resulting in forfeiture of 0.803 years of service credit. She was entitled to continue receiving a retirement benefit based on the remaining 18.232 years of service credit (time worked prior to the burglary). As a result of this determination, Respondent's monthly allowance was decreased, thereby creating an overpayment in the amount of \$17,495.56.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on January 10, 2023. Respondent represented herself at the hearing. Respondent City did not appear at the hearing.

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

The sole issue for hearing was whether Respondent's felony criminal convictions were for conduct arising out of or in the performance of her official duties under Government Code section 7522.72, subdivision (b)(1).

CalPERS argued that because Respondent's fraud involved not just submitting the claim forms, but devising a scheme to defraud, which included and cannot be separated from her position as a Deputy Sheriff, the felony forfeiture statute must be applied in this case.

Respondent testified that she had no idea who the perpetrator of the burglary was. She admitted that she listed her Service Firearm and radio in her claim to her insurer; that she knew they were not her personal property, but claimed she thought they became her personal property after 4 years "because someone told her that." She also called her prior criminal defense attorney to testify on her behalf. He testified that none of the charges against Respondent arose out of her official duties. He reported that the

defense team spoke to jurors after the trial, and the jurors reported that they focused on the personal items still in her possession which were fraudulently claimed because Respondent still had them.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found Respondent's criminal convictions were conclusive evidence of her guilt of the offenses charged, and both the mail and wire fraud convictions were premised on the same scheme to defraud her insurer. The ALJ agreed with CalPERS that the scheme Respondent formed to defraud her insurer included concealing her relationship with Fowler and the fact he was the obvious suspect in the burglary that was the source of her insurance claim. Even if concealing Fowler's role in the burglary was primarily intended to protect her job as opposed to facilitate her fraud, this concealment furthered the fraud because it reduced the chance of recovery of the stolen items. Respondent's scheme to defraud the insurer also included claiming the losses of her Service Firearm and radio, which she knew were not her property, regardless of whether those items were central to the jury's verdict.

In the Proposed Decision, the ALJ concluded that Respondent was convicted of felonies for conduct arising out of or in the performance of her official duties in connection with obtaining service retirement benefits under Government Code section 7522.72, subdivision (b)(1).

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 the work "in" with the word "is" in the third line, paragraph 42, on page 12 of the Proposed Decision.

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

March 15, 2023

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