

ATTACHMENT C

RESPONDENT'S ARGUMENT

October 23, 2023

AGENCY CASE NO. 2022-0510

OAH NO. 2022110137

Terry C. Monday, Respondent

Respondent's Argument

Board Services Unit Coordinator

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CalPERS Legal Office

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Mr. Monday has a preference against precedential status because of the sensitive mental health issues that he request to remain confidential.

Respondent's Argument

1. Mr. Monday failed to timely submit a completed election package because he states in his testimony that, "I didn't remember receiving any letters in the mail".

2. The CalPERS representative failed to email the service credit department when Mr. Monday requested ARSC on April 25, 2003 when he applied for retirement. The CalPERS witness testified that the staff were trained to email the service credit department. The representative failed to inform Mr. Monday that ARSC would not have been available until January 1, 2004. Mr. Monday's 2003 retirement was because of his mental illness. Mr. Monday states in his testimony that "I was hearing voices and seeing images. The psychiatrist said I have Schizophrenia and took me of work".

3. Mr. Monday states that, "I didn't remember seeing any letters". The CalPERS August 26, 2011 letter directs the member to a website "For additional information." Mr. Monday asked the CalPERS staff witness, if she knew that he was "extremely limited to use computer?" The letter did not have a time-frame for the CalPERS service department delays.

4. The March 21, 2012 CalPERS election packet was not mailed by U.S. Postal certified mail. Mr. Monday could not have completed the election packet because he states that he did not remember receiving the packet. CalPERS assumed the election packet would successfully be mailed and delivered to Mr. Monday by regular U.S. Postal Service.

5. The statement that, "CalPERS has no record of the packet coming back as undeliverable" is not evidence that Mr. Monday received the 2012 packet. The election packet was not mailed certified. Without certification it would have been impossible to track the packet to determine if Mr. Monday had received or not received the packet.

6. Prior to August 2, 2023, Ms. Monday had mailed three separate cashier checks to the finance company for their car. The first three checks were received and cashed by the finance company. On August 2, 2023, Ms. Monday mailed in a fourth cashier check to pay off their car. The payoff check was never received by the financial company and has never been cashed. Ms. Monday will not be able to stop payment on the fourth check until October 31, 2023, because the credit union has to wait ninety days to stop payment. The fourth cashier check has never been returned to the Mondays. The checks were all mailed to the same address. The payoff check was not mailed certified. There is not any tracking information to show what happened to the mailed payoff cashier check.

7. Ms. Monday had complained that all the Monday's mail was not being delivered to their address. The Fairfield U.S. Post office told her that sometimes "substitutes" delivered the mail. Judge Aspinwall asked Mrs. Monday for a "ballpark" time-frame that the Postal Service was not delivering all the Monday's mail. Ms. Monday testified that she could not "swear" to the 2007 and 2012 time-frame.

8. On August 15, 2017 Mr. Monday submitted a power of attorney form designating Ms. Monday as his attorney-in-fact at the SRO. Ms. Monday did not have Power of Attorney prior to 2017.

9. On April 5, 2018 Mrs. Monday contacted CalPERS to ask about service credit options. Mr. Monday was considering retiring from the district. The CalPERS team member describes the call as "Service Credit Purchase". Ms. Monday's call was for general information about service credit.

10. Ms. Monday wrote an appeal letter on Mr. Monday's behalf, September 10, 2021.

11. Mr. Monday has testified that he "heard voices" and seen images" for many years. CalPERS did not mail a certified letter to Mr. Monday to inform him that an election packet was being mailed to him. CalPERS failed to mail the election packet certified. Mr. Monday testified that, "I wanted to get ARSC".

12. Mr. Monday had detrimentally relied on the 2003 representative statement made by the CalPERS representative regarding the "excessive cost and time limited availability of

ARSC". Mr. Monday testified that, "I retired in 2003. I told the clerk I wanted ARSC. The clerk said that it was "too expensive" and would go away after the first of the year. I didn't think about it after that". Mr. Monday states in his September 10, 2021 appeal letter that he "believed" the representative. Mr. Monday was not aware that he could have applied for ARSC when he was reinstated to CalPERS in 2007.

13. Mr. Monday applied for ARSC in 2011, because Mrs. Monday had contacted CalPERS. The Fairfield/Suisun Unified School district was planning to lay off staff. Mr. Monday states in his testimony that, "it was the time I checked the boxes". The clerk said that he would "check into it". Mr. Monday relied on the CalPERS staff statements because he testifies that he "hears voices" and "seen images" all his life.

14. The CalPERS relationship with members, is member to member, as well as staff to member. It was CalPERS responsibility after almost one year of delays in processing Mr. Monday's election packet to mail the packet by U.S Postal certified mail and or certified letter informing Mr. Monday that his election packet was expected to be mailed in a certain time-frame. A certified letter and election packet would have provided evidence of the election packets delivery. It would have been a reasonable action for the service credit department to take an extra step to ensure Mr. Monday received the election packet. The service credit department in 2011 and 2012 were not CalPERS "regular business processes"

15. CalPERS staff testified that the service credit department was "busy". CalPERS staff testified that they were "five times as many applications for ARSC, including other service credit requests". CalPERS staff testified that in "April" 2011 service credit requests did not get moved into the new system. They were "manually generated "and would go "live in September". The service credit department was overwhelmed and rushed to process the increased requests.

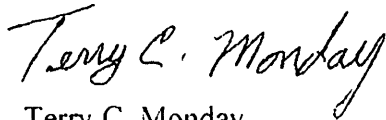
16. Mr. Monday would have successfully purchased ARSC, if only he had requested ARSC prior to 2011. The statements made by the representative in 2003 greatly influenced Mr. Monday to believe that he could not apply for ARSC. The disruptions and delays from the CalPERS implementation of a new computer system integrating 49 systems in 2011,

created an unfortunate situation for Mr. Monday because of his mental illness. The service credit department unintentionally, caused Mr. Monday's failure to purchase ARSC.

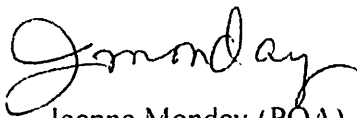
17. Judge Aspinwall states, "In Dr. Fuglei's opinion, Mr. Monday's mental health condition significantly compromised his ability to function at work for many years prior to 2018. His mental health condition could also have a negative impact in Mr. Monday's ability to complete CalPERS paperwork.

18. CalPERS, implemented "a new computer system into one new integrated system, in 2011. Mr. Monday requested ARSC in the same year. The CalPERS service credit department's "regular business processes" were very much disrupted, in 2011.

Respectfully,



Terry C. Monday



Joanne Monday (POA)