

ATTACHMENT B

STAFF'S ARGUMENT

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

Thomas J. Mangalathil (Respondent) was a Psychiatric Technician for California Medical Facility, California Department of Corrections and Rehabilitation (Respondent CDCR). Respondent applied for service retirement on September 5, 2019, (effective August 14, 2019) and has been receiving his service retirement benefits since September 16, 2019.

Prior to his service retirement, on August 9, 2019, Respondent visited a CalPERS Regional Office and was provided with a copy of the Publication 43 – *A Guide to Completing Your CalPERS Service Retirement Election Application* (PUB 43). PUB 43 informed Respondent that he may qualify for disability or industrial disability retirement and referred Respondent to Publication 35 – *A Guide to Completing Your Disability Retirement Election Application* (PUB 35) for more information.

Copies of PUB 35 were provided to Respondent multiple times: by mail at least twice due to telephone requests to CalPERS on September 3, 2019, and July 17, 2020, and given to him at least once during an in-person meeting at CalPERS Regional Office on September 5, 2019.

PUB 35 provides detailed information regarding the disability retirement application process, required documentation, timelines for completing the application process, the option to apply for service pending disability or industrial disability retirement, and how to contact CalPERS. PUB 35 also instructs “[y]ou should apply for disability or industrial disability retirement as soon as you believe you are unable to perform your usual job duties because of illness or injury that is of permanent or extended duration, expected to last at least 12 months, or will result in death” and “[d]elaying your application for retirement may affect important benefits you may be entitled to receive.”

On September 5, 2019, CalPERS staff provided Respondent information about disability retirement/industrial disability retirement in-person at a CalPERS Regional office

By letter dated September 9, 2019, CalPERS acknowledged receipt of Respondent's service retirement application and informed him that “[y]ou may be entitled to receive a disability retirement if you are unable to work because of an illness or injury. To apply for a disability retirement, you must complete a Disability Retirement Election Application.”

On September 3, 2019, April 13 and 23, 2021, May 14 and 28, 2021, June 18, 2021, and July 8 and 22, 2021, Respondent communicated with CalPERS staff by telephone about the disability retirement/industrial disability retirement application processes.

On August 9, 2021, CalPERS received Respondent's application for disability retirement dated July 30, 2021. Because Respondent submitted this application approximately two

years after he service retired, it was construed as a request to change from service to disability retirement. CalPERS requested information from Respondent and Respondent CDCR concerning this change. After a review of the documents and 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 a disability 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). The hearing was held over three days: October 18, 2022, December 5 and 22, 2022. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing, and the matter proceeded as a default against Respondent CDCR 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 presented the testimony of CalPERS' staff and documentary evidence, which laid out the facts and timeline of CalPERS' many communications, meetings, information, instructions, and documentation provided to Respondent regarding service retirement, disability retirement, industrial disability retirement and service pending disability retirement.

Respondent testified on his own behalf that he has difficulty concentrating and staying organized due to the stress and "mental challenges" he experiences; that he had trouble getting services and assistance from CalPERS regarding his retirement options because in-person visits to the CalPERS' regional offices were temporarily prohibited due to the COVID-19 pandemic; that CalPERS staff told him he could apply for disability retirement at "any time;" that he discussed his retirement options with CalPERS in-person and by telephone approximately 24 times prior to filing for disability retirement and was never informed that he was or would be late applying for disability retirement until April 13, 2021; and that he was unable to afford to retain a lawyer and had to complete the application process without the assistance of legal counsel.

When all the evidence was considered, the ALJ denied Respondent's appeal and affirmed CalPERS' determination that Respondent's late disability retirement application could not be accepted pursuant to Government Code section 20160. The ALJ found that CalPERS repeatedly provided Respondent with information, instructions, and documentation to timely apply for disability retirement or service pending disability retirement both before and after he service retired; that Respondent was provided with CalPERS' publications which not only detailed the application processes and deadlines, but also warned Respondent about the consequences of missing established filing

deadlines. The ALJ also found that Respondent's failure to make a reasonable inquiry himself or seek clarification as to his own obligations does not constitute a correctable mistake; that Respondent was aware he had the option to apply for disability retirement as early as August 2019. The ALJ further found that Respondent's assertion that CalPERS staff informed him that he could apply for disability retirement "at any time" was not persuasive given the vagueness of his assertion, the lack of any supportive documentation, and the weight of the evidence to the contrary; and that Respondent failed to submit sufficient evidence to support that he had been diagnosed with any medical condition that affected his ability to timely submit his application for disability retirement. The ALJ concluded Respondent failed to establish that the facts surrounding his failure to timely file for disability retirement constituted an error or omission correctable pursuant to Government Code section 20160.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the Proposed Decision." To avoid ambiguity, staff recommends inserting "until" between "waited" and "August 9, 2021" on page 14, in paragraph 28 of the Proposed Decision.

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

March 15, 2023

Helen L. Louie
Attorney