

ATTACHMENT B

STAFF'S ARGUMENT

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

Beatriz A. Uriostigue (Respondent) was employed as a Box Office Coordinator with the City of Poway (City) beginning in May, 2008. On March 6, 2019, Respondent submitted an application for service retirement. Respondent service retired on July 1, 2019, and received her first retirement allowance payment on August 1, 2019.

In January 2020, CalPERS' Actuarial Office discovered a reporting error made by the City. The City had incorrectly reported Respondent's work schedule as 60 hours per week rather than 40 hours per week from July 17, 2017, through May 5, 2019. This over reporting of hours resulted in overstated final compensation from 2017 to 2019. After CalPERS notified the City, it corrected Respondent's reported work hours on September 2, 2021.

CalPERS determined that the correction required a reduction of Respondent's final compensation from \$6,497.21 to \$4,348.93, resulting in a decrease of \$520.28 to her current monthly allowance, and a total overpayment of \$13,914.84. On September 28, 2021, CalPERS notified Respondent of the reporting error, the adjustment to her final compensation, and the resulting overpayment.

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 February 9, 2023. Respondent was represented by counsel at the hearing.

At the hearing, CalPERS presented evidence regarding the reporting error, adjustment to Respondent's final compensation and the overpayment. CalPERS also presented evidence to show that Government Code section 20164 applies where the system makes an erroneous payment to the member, and the time to collect expires three years from the date of payment. CalPERS proved that Respondent's first service retirement benefit payment was made on August 1, 2019, and that CalPERS notified Respondent of its determination on September 28, 2021. Since the time between August 2019 and September 2021 is less than three years, CalPERS is allowed to collect the overpayment.

Respondent testified that she would have never retired had she known that the calculation of her benefit was incorrect and that she should not be penalized for her employer's error. Respondent admitted that she had never worked a 60-hour work week, and claimed that CalPERS was precluded under Government Code section 20160, subdivision (a)(1) from adjusting her benefit and recovering the overpayment because the correction occurred more than six months after the discovery of the mistake.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that CalPERS was not precluded from adjusting her benefit and collecting the overpayment because Government Code

section 20160, subdivision (a)(1) applies to members' mistakes. CalPERS has a statutory mandate to correct mistakes. The ALJ held that Government Code section 20164 permits CalPERS to collect three years from the date when the erroneous payment was made, and less than three years had elapsed from the date of payment.

In the Proposed Decision, the ALJ denied Respondent's appeal and affirmed CalPERS' decision to adjust Respondent's retirement benefit. The ALJ further ordered that Respondent owes CalPERS the amount of the overpayment of retirement benefits totaling \$13,914.84 attributable to the downward adjustment in her retirement benefit.

Pursuant to Government Code section 11517, subdivision (c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." To avoid ambiguity, staff recommends correcting the citations to Government Code section "2160" to "20160" on page 6 paragraph 17, and on page 17 paragraph 12 of the Proposed Decision; and correcting the retirement date of "July 2021" with the correct retirement date of "July 2019" on page 8 paragraph 3 of the Proposed Decision.

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

April 18, 2023

Cristina Andrade
Senior Attorney