

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Wendell Bennett (Respondent) was employed by Respondent Metropolitan State Hospital as a Psychiatric Technician. By virtue of his employment, he was a state safety member of CalPERS. Over a period of 12 years, Respondent filed five applications for industrial disability retirement. CalPERS canceled all of them because they were incomplete for multiple reasons, and despite numerous counseling sessions Respondent failed to fix the deficiencies.

First Application

On September 10, 2007, Respondent attended a pre-retirement counseling session and signed and submitted an application for service pending industrial disability retirement (IDR). In his application, he requested an earlier effective retirement date of October 6, 2006 and claimed disability on the basis of an orthopedic (back) condition.

Respondent retired for service effective September 1, 2007. On November 26, 2007, CalPERS notified Respondent that it had accepted his application for service retirement, but the IDR portion of his application was canceled due to missing documents.

Second Application

On January 2, 2008, Respondent submitted a second application for service pending industrial disability retirement. Respondent's second application was a duplicate of his first application and was still missing documents.

On October 29, 2008, CalPERS sent Respondent an Earlier Effective Date Questionnaire. Included with the questionnaire was notice to Respondent that CalPERS could not proceed without the requested information. The notice also informed Respondent if CalPERS did not receive a written response within 30 days, his application would be canceled.

On November 3, 2008, CalPERS called Respondent to discuss providing responses to the questionnaire. Respondent failed to supply the requested responses, so CalPERS subsequently cancelled his application for noncompliance.

Third Application

On October 12, 2010, a CalPERS analyst reviewed Respondent's third application together with him and highlighted the outstanding sections. Nothing happened for three years. On October 11, 2013, Respondent met with a CalPERS representative to re-apply for IDR and obtain an earlier effective retirement date. Five years later, on September 18, 2018, CalPERS again reviewed Respondent's IDR application with him and counseled him regarding missing documents, required forms and deadlines. Finally, on December 5, 2018, Respondent once again came into a CalPERS Regional Office to

inquire about the disability retirement process. On December 10, 2018, Respondent filed his third application for IDR.

On December 14, 2018, CalPERS notified Respondent by mail that several documents were again missing from his application. On December 27, 2018, CalPERS placed a courtesy call to Respondent and informed him of the missing documents and granted him an extension to submit them. Respondent failed to submit the missing documents within the extended timeline and CalPERS cancelled his third application.

Fourth Application

On March 18, 2019, Respondent submitted a fourth application for IDR. Respondent's fourth application was a duplicate copy of his third application. On May 2, 2019, CalPERS sent Respondent two questionnaires seeking additional information: one concerning his request for an earlier effective retirement date and the second concerning his late application. Respondent's deadline to provide the responses to the questionnaires was June 10, 2019. Respondent did not provide all of the requested information, so CalPERS cancelled his fourth application.

Fifth Application

On September 5, 2019, Respondent submitted his fifth IDR application. On November 26, 2019, CalPERS mailed Respondent a letter notifying him that CalPERS could not accept this application because it was late; and that Respondent's prior interactions with CalPERS showed he had knowledge of the IDR application process so no correctable mistake was made.

Respondent appealed this 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 April 1, 2021 and July 6, 2021. Respondent represented himself at the hearing. Respondent DSH did not appear at the hearing.

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.

Respondent testified on his own behalf. During his testimony, Respondent admitted that his fifth application was late. He also conceded that CalPERS made numerous attempts to assist him with the IDR application process. He stated that he had simply grown frustrated and gave up because he was depressed and had health ailments. Respondent also called his wife, Nancy Bennett, to testify on his behalf. Mrs. Bennett testified that Respondent's son passed away, which emotionally distressed Respondent. She also testified that Respondent had made his best attempt at successfully completing the IDR application process, but he was having difficulty obtaining the required information.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that;

Effective September 1, 2007, when [R]espondent retired and began to receive his service retirement benefits, he ceased to be a CalPERS member. More than 12 years after his retirement, [R]espondent submitted Application #5 on September 5, 2019. Respondent testified that, during those 12 intervening years, he suffered chronic pain and depression after the death of his son. However, no evidence was presented that he suffered a disabling condition . . . which prevented him from submitting a new and complete IDR application.

In the Proposed Decision, the ALJ concludes that Respondent's fifth application for IDR was not timely and a reasonable person in similar circumstances would have sought to make a correction within a reasonable amount of time and within the statutory deadline.

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

September 15, 2021

Dustin Ingraham
Staff Attorney