

ATTACHMENT B

Staff Argument

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Terry C. Monday (Respondent) established membership with CalPERS as a local miscellaneous member from 1996, and remained so until he service retired effective December 31, 2018.

From January 2004 to December 31, 2012, CalPERS offered members the ability to purchase Additional Retirement Service Credit ("ARSC"). Public Employees' Pension Reform Act of 2013 (PEPRA) eliminated ARSC as a service credit purchase option effective January 1, 2013.

On May 23, 2011, Respondent submitted a Request for Service Credit Cost Information – ARSC ("Request").

On March 21, 2012, CalPERS sent Respondent a Confirmation of Intent Election packet, providing information, including the cost to purchase ARSC. The packet advised Respondent: **"Should you wish to pursue this purchase, you must complete and return the attached Confirmation of Intent to Purchase Service Credit form within 30 days..."** (bold in original). Respondent never submitted the Confirmation form. Between 2012 and 2017, Respondent contacted CalPERS various times, but never inquired about purchasing ARSC.

On April 5, 2018, Respondent's wife contacted CalPERS and inquired about service credit options, including the purchase of ARSC. CalPERS informed her that ARSC had been eliminated as an option in 2013.

On September 3, 2020, Respondent's wife asked CalPERS about the Request submitted in May 2011. CalPERS informed her that the Request was never completed because Respondent did not return the required Confirmation form.

On June 7, 2021, Respondent's wife again inquired about the Request, and was told the Request was not completed because Respondent did not return the required Confirmation form. She disagreed, stating that he should be able to purchase ARSC at the 2003 cost.

By letter dated October 11, 2021, CalPERS informed Respondent that he is not eligible to purchase ARSC because CalPERS never received a completed election for purchase, and ARSC was eliminated as a service credit purchase option in 2013.

Respondent appealed CalPERS' determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). Three days of hearing were held on March 16, March 30, and July 12, 2023. Respondent represented himself, with the assistance of his spouse.

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, answered Respondent's questions, and clarified how to obtain further information on the process.

At the hearing Respondent called Amy Fuglei, M.D., to testify regarding his mental health. Dr. Fuglei began treating Respondent in 2018. Dr. Fuglei testified that Respondent has a diagnosis of schizophrenia, which was stable and managed with medications. Dr. Fuglei's opinion is that Respondent's mental condition compromised his ability to function at work and could have had a negative impact on his ability to complete CalPERS paperwork. However, Dr. Fuglei could not definitively comment on his ability to complete paperwork in 2012, since she did not treat him until 2018.

CalPERS presented testimony which confirmed the timeline of events, including the passage of PEPRA which eliminated the option to purchase ARSC in 2013.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. Government Code section 20160, subdivision (a)(2) provides that a correction can be made under the theory of excusable neglect and may be granted as a result of disability. However, no relief can be granted unless the party seeks correction within a reasonable time and may be denied when there is an unreasonable delay. Similarly, Government Code section 20160, subdivision (a) requires a member to "make the inquiry that would be made by a reasonable person in like or similar circumstances."

In the Proposed Decision, the ALJ found that Respondent was not diligent in following up on his Request in 2011. Even given his poor judgment and diminished concentration related to schizophrenia, it was not reasonable to wait beyond January 1, 2013 (when ARSC was eliminated), before following up with CalPERS. In fact, Respondent did not follow up until 2018. Under those circumstances, Respondent's failure to make an "inquiry that would be made by a reasonable person in like or similar circumstances" did not constitute a correctable mistake.

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

November 15, 2023

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