

ATTACHMENT C

RESPONDENT'S ARGUMENT

RESPONDENT'S ARGUMENT REF NO. 2023-0492/OAH CASE NO. 2024040791

My name is Michael Lillie and the following is my argument against the proposed decision regarding my request for my industrial disability retirement (IDR) and a second, separate request for my retiree medical benefit with current my service retirement both under the exception allowed under **California Code, Government Code - GOV § 20160**.

California Code, Government Code - GOV § 20160

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 20164

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

(3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

The proposed decision states, "As an initial matter, Government Code section 20160 does not apply to retiree health benefits. Although its text does not expressly disclaim application to retiree health benefits, it is part of a different statutory scheme to PEHMCA. Government Code section 20160 is located in the Public Employees' Retirement Law (PERL), codified under Title 2, Division 5, of the Government Code, which governs pension benefits. By contrast, PEMHCA governs health benefits and is codified in a separate part of the Government Code, Title 2, Division 5,

11. Even assuming, without deciding, that Government Code section 20160 could potentially apply to retiree health benefits, Lillie does not meet all the requirements of Government Code section 20160. Specifically, he does not meet the requirement that the sought correction not provide him with a right not otherwise available to him. Lillie separated from his CDCR employment on December 31, 2017. The earliest that Lillie could retire for service was August 30, 2018, when he turned 50. Because it was impossible for Lillie to retire within 120 days of his separation date given his age at separation, he was not otherwise eligible for

retiree health benefits. Thus, the mistake statute cannot be wielded to give Lillie a right to retiree health benefits not otherwise available.

My argument for both my IDL and/or my retiree medical should be allowed under Government Code section 20160 because what is exactly stated in the law and in the judges written decision – the law text does not expressly disclaim application to retiree health benefits. The CalPERS Board can allow this exception to a member on ANY benefit that was the result of mistake, inadvertence, surprise, or excusable neglect. I have proven that my three veteran state employment attorneys advised me to not accept reinstatement offers by CDCR so they would get a larger monetary reward and that I could get my IDL reinstatement even without reinstatement. This advice was against my best interest and these three attorneys new about the Haywood et al decisions and never informed me of them. See below facts:

December 4, 2023 Michael Lillie CalPERS ID 5261471843

Dear CalPERS,

My name is Michael Lillie, CalPERS ID 5261471843, and I am a retired peace officer. I am seeking an exemption to your denial of my Health Benefit under California Code, Government Code - GOV § 20160. I was advised by your attorney, Mehron Assadi, based on his knowledge of my exemption qualifications that he learned through his handling of mt CalPERS IDR appeal and pending hearing.

Mr. Assadi informed me that I may be eligible to receive my retired Health Benefits and IDR, even though I did not retire within the 120 days of separation from CDCR, due to the adverse legal advice I received from my three employment attorneys during my termination and retaliation civil lawsuit against my employer, CDCR. None of my attorneys informed me that I would lose my opportunity to retain my health benefits upon retirement nor my ability to receive an IDR upon my termination and subsequent SPB and civil litigation on my behalf. They advised me not to take the several offers of reinstatement made by CDCR, in lieu of dropping my civil whistleblower retaliation lawsuit, because they informed reinstatement would lower the financial damages CDCR would owe me if I accepted their offer of reinstatement. They assured me that I could gain a financial settlement that would satisfy their monetary compensation and then I could file for my expected IDR and not lose my retiree medical whether I received a regular or ID retirement. I paid these attorneys over \$90,000 in fees for this adverse advice which was detrimental to my future but profitable for theirs. Had I known I would lose my right to my IDR and retiree medical, which I first learned upon denial of my IDR application, I would have accepted CDCR's offer of reinstatement upon my termination. Because my attorney's bad advice and greed that was based on their own financial well-being and not what was best for their client (me), I lost my right to an IDR and lost my retiree medical for me and my family. I (we) do not have medical insurance because of this intentionally adverse, misleading advice by my attorneys.

The facts of my situation are exactly why there is an exemption under California Code, Government Code - GOV § 20160 – to correct a wrong. NOWHERE does the law say GC 20160 does not apply the IDR benefit or retiree health benefits. It specifically states ANY benefit! I am asking the CalPERS Board to do the right thing and award me what I deserve – My IDR and my retiree medical.

Additionally, the proposed decision should never become precedent or law because it is harmful to CalPERS members who do the right thing but are punished by who are trying to unfairly and/or unlawfully take advantage of the CalPERS system. The CalPERS Board must take each decision on a case-by-case basis instead of their current boiler-plated response in order to protect their own liability. CalPERS and its employee have consistently told me throughout this process that they care about their members. If the CalPERS Board adopts this proposed decision, it will be proof that they are as immoral and dishonest as the officers who I initially reported misconduct on that started this whole mess and ruined my unblemished and successful law enforcement career.

Michael Lillie