

ATTACHMENT B

STAFF'S ARGUMENT

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

Matthew J. Hoch (Respondent) became a CalPERS member through employment with the City of Alhambra on July 4, 1994. He applied for service pending disability retirement in April 2022. In a letter dated April 18, 2022, CalPERS acknowledged receipt of his application, and referred him to Publication 33, entitled "A Guide to CalPERS Employment After Retirement."

By letter dated September 1, 2022, CalPERS advised Respondent that his service retirement application had been processed. He received his retirement allowance retroactive to March 2022 beginning in September 2022. At the time of his retirement, Respondent was employed by the City of Long Beach as a Fire Engineer.

Beginning on October 31, 2022, the Chino Valley Independent Fire District (District) sought applications for its position of Auxiliary Worker. According to the District's job posting, the Auxiliary Worker position "performs a variety of routine administrative and field duties in support of District operations. The Auxiliary Worker's work schedule may be varied and may require the incumbent to work after normal working hours, or on weekends and holidays." The job posting did not indicate that the position was a retired annuitant position.

Respondent applied for the District's Auxiliary Worker position. In his application for the position, he stated he resigned from his prior position with the City of Long Beach. He did not indicate anywhere in his job application that he had retired.

Respondent began his employment with the District in the position of Auxiliary Worker effective February 11, 2023. The Auxiliary Worker was a regular permanent staff position; CalPERS contributions were taken from Respondent's pay; and Respondent accrued sick and vacation leave.

CalPERS became aware of Respondent's employment with the District and investigated the circumstances of his hire. CalPERS determined that Respondent's employment with the District violated the restrictions on working post-retirement in the Public Employees' Retirement Law (PERL). CalPERS further determined that Respondent is subject to reinstatement from retirement for the period of his employment with the District (February 11 through April 21, 2023) and that he is required to reimburse CalPERS all retirement benefits he received during that period, totaling \$29,072.40.

Respondent resigned from the position of Auxiliary Worker on April 21, 2023, after the District informed him that further employment would require him to be reinstated from retirement.

Respondent appealed CalPERS' 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 November 21, 2024. Respondent represented himself at the hearing. The District did not appear at the hearing and a default was taken as to the District only.

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, CalPERS presented evidence and testimony to show that Respondent's post-retirement employment with the District violated the PERL. Specifically, after retiring from the City of Long Beach and collecting CalPERS retirement benefits, Respondent became employed in a regular permanent position by a CalPERS-covered employer, the District. Respondent did not reinstate from retirement before seeking the position with the District as required by the PERL.

Respondent testified on his own behalf at the hearing that he decided to get a job to pay debts he incurred while waiting for his retirement application to be processed. Respondent argued that his employment with the District fell within the statutory exception of Government Code section 7522.56 and therefore did not violate the PERL. According to that exception, a CalPERS retiree need not reinstate from retirement to work in a position for a CalPERS-covered employer that is "either during an emergency to prevent stoppage of public business or because the retired person has skills needed to perform work of limited duration." Respondent testified that he was hired by the District due to his particular skills, and he only worked approximately 300 hours. Respondent also argued that he is being punished for trying to get a job to pay his debts and be a productive member of society, that CalPERS did not suffer any "damages" by his decision to work post-retirement, and that he could not afford to repay the benefits he received during the violation period.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ held that Respondent's post-retirement employment with the District, from February 11 through April 21, 2023, was in violation of the PERL. The ALJ further held that CalPERS may collect the overpayment of \$29,072.40 from Respondent for retirement benefits erroneously paid to him during his post-retirement employment.

The ALJ explained that Respondent's post-retirement employment with the District did not fall within the exception to reinstatement set forth in Government Code section 7522.56. The ALJ noted that the Auxiliary Worker position involved only routine duties and there was no evidence that Respondent had a particular skill that was required to perform those duties. Further, Respondent only worked 300 hours after he became concerned about the consequences of post-retirement employment in violation of the PERL. He resigned from the position; he was not let go because the work required by the position had been completed.

The ALJ rejected Respondent's assertion that he should not be required to repay benefits he received during the violation period because there was no injury to CalPERS. The ALJ explained that the PERL is clear that one must reinstate from retirement before becoming employed again in a regular position. The PERL also is clear that one consequence for unlawful post-retirement employment is reimbursing CalPERS the retirement benefits received during the period of employment in question.

Because Respondent was employed in a regular position, his employment violated the restrictions on working post-retirement.

The ALJ rejected Respondent's assertion that he was being punished for trying to get a job to pay his debts and be a productive member of society. The ALJ held that Respondent is not being punished - he simply is being required to follow the law. The PERL requires him to pay back the retirement benefits he was not entitled to receive. The operative statutes provide no discretion to implement any other remedy. The fact remains that Respondent received a full-time salary and his retirement benefits at the same time for over two months, in clear violation of the PERL.

Finally, the ALJ found that while Respondent's claim that he cannot afford to pay back CalPERS \$29,072.40 is understandable, he failed to provide any corroborating evidence demonstrating his current financial situation or an inability to repay the amount. The ALJ noted, however, that Respondent can address the repayment by either a small actuarial equivalent reduction of his monthly retirement benefits during his lifetime, or some other periodic payment plan permitted by the PERL.

In the Proposed Decision, the ALJ concluded that CalPERS met its burden of establishing by a preponderance of the evidence that its determinations are correct. Respondent's arguments were unpersuasive. The ALJ explained that Respondent's position with the District was a regular assignment, not a retired annuitant position. Therefore, CalPERS properly concluded that the "limited duration" exception, which would allow a retiree to work without reinstating from retirement, did not apply.

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 changing the reference to "he or she" on page 12, paragraph 5, and page 14, paragraph 8 to "the person" and changing "shall" to "may" on page 12, paragraph 5, and page 14, paragraph 9.

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

February 19, 2025

Austa Wakily
Senior Attorney