

ATTACHMENT B

STAFF'S ARGUMENT

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

Nicholas R. Meigs (Respondent) was employed by the Stanislaus Consolidated Fire Protection District (Respondent District) as a Fire Engineer. By virtue of his employment, Respondent is a local safety member of CalPERS.

On August 6, 2019, Respondent District filed an Employer-Originated Industrial Disability Retirement Application, which CalPERS received on August 9, 2019. On September 10, 2019, Respondent filed his Industrial Disability Retirement Application, which CalPERS received on September 16, 2019.

Respondent retired for industrial disability effective January 15, 2020 and has been receiving his CalPERS retirement allowance since February 3, 2020.

On March 5, 2020, CalPERS Office of Audit Services (OFAS) completed an employer compliance review of a sample set of Respondent District employee records for the period of January 1, 2017 through March 28, 2019. With respect to Respondent, OFAS determined that Respondent District incorrectly reported Temporary Upgrade Pay and Holiday Pay compensation.

Based upon the findings in the audit, CalPERS determined that Respondent District incorrectly reported a retroactive salary adjustment due to a salary increase as Temporary Upgrade Pay. Correction of the Temporary Upgrade Pay error did not affect Respondent's retirement allowance.

CalPERS also determined that Respondent District incorrectly reported Holiday Pay as a lump sum amount. Respondent's Holiday Pay should have been reported as he earned it. In addition, Respondent District incorrectly reported Holiday Pay in excess of the maximum 216 hours per year as specified in the memorandum of understanding regarding employee compensation. Correction of these errors resulted in a \$42.86 reduction in Respondent's retirement allowance.

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 August 10, 2022. Respondent represented himself at the hearing. Respondent District was represented by counsel 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.

At the hearing, CalPERS' staff testified regarding the OFAS audit and findings specific to Respondent. Respondent testified on his own behalf. Respondent did not dispute that the Temporary Upgrade Pay or Holiday Pay was incorrectly reported or that CalPERS is required to correct the error. Respondent District did not provide any witnesses or evidence.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent bears the burden of proof, and he did not meet his burden. The ALJ opined that the Public Employees' Retirement Law (PERL) specifies the manner in which compensation and special compensation must be reported to the Board. The PERL specifies that when reporting special compensation such as Holiday Pay, the employer must identify the pay period in which the special compensation was earned. Moreover, special compensation must be paid periodically as earned, not in a lump sum. Thus, the Holiday Pay at issue here must be reported during each pay period in which it was earned. Given the fact that the disputed Holiday Pay was paid in a lump sum, it violated the PERL. Under those circumstances, the ALJ found that CalPERS properly re-calculated Respondent's retirement allowance.

Pursuant to Government Code section 11517 (c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." In order to avoid ambiguity, staff recommends that reference to the Office of Audit Services be changed from "OAS" on page 3 in paragraph 7 to "OFAS."

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

November 16, 2022

Austa Wakily
Senior Attorney