

ATTACHMENT B

STAFF'S ARGUMENT

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

Kai On (Respondent) was an employee of the California Department of Motor Vehicles (Respondent DMV). By virtue of his employment, Respondent is eligible for CalPERS health benefits under the Public Employees' Medical and Hospital Care Act (PEMCHA), if all eligibility requirements are met.

On February 2, 2013, CalPERS received an employer-originated application from Respondent DMV on Respondent's behalf. On February 13, 2013, CalPERS notified Respondent of the employer-originated application and requested that Respondent complete and return his portion of the disability retirement application. CalPERS also provided Respondent with a copy of Publication 35 "A Guide to Completing Your CalPERS Disability Retirement Election Application" (PUB 35), which included information about CalPERS health coverage eligibility including the warning "if your retirement effective date is more than 120 days after separation from employment, you are not eligible for coverage at retirement or at any future date." Respondent did not reply or provide the requested information. As a result, his application was canceled on July 3, 2013.

Respondent DMV issued a Notice of Medical Termination with an effective date of termination on April 4, 2014. Respondent appealed the medical termination to the State Personnel Board (SPB). On September 25, 2014, SPB upheld the medical termination.

On March 23, 2021, Respondent submitted an application for service retirement with an effective date of June 15, 2021. CalPERS processed the application and Respondent began receiving his service retirement benefits.

On October 4, 2023, Respondent wrote a letter to CalPERS regarding health enrollment asserting that he was waiting for his "real" CalPERS retirement payment and health insurance. On October 13, 2023, CalPERS notified Respondent he was not eligible for health benefits because he retired beyond 120 days from his separation date with Respondent DMV. On November 30, 2023, CalPERS met with Respondent and explained his status and options. After the meeting, CalPERS sent a confirming letter to Respondent which summarized the meeting, explained his benefits, and cited to relevant law precluding Respondent from receiving health benefits.

Respondent sent CalPERS a letter on December 7, 2023, explaining he did not know about the health benefits for which he could have been eligible. On April 17, 2024, CalPERS determined that Respondent did not recognize he was forfeiting his health benefits by not complying with CalPERS' request to complete a disability retirement application. CalPERS offered to correct the mistake by providing Respondent with the opportunity to submit a disability retirement application.

Respondent declined the option to submit a disability retirement application. Instead, he appealed CalPERS' determinations 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 September 4, 2024. Respondent represented himself 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, answered Respondent's questions, and clarified how to obtain further information on the process.

At the hearing, CalPERS presented the testimony of three CalPERS employees who testified regarding disability benefits and the processing of employer originated disability applications. CalPERS staff testified that Respondent's disability application was canceled because it was incomplete and did not provide the necessary information. Staff confirmed Respondent service retired in June of 2021, more than 120 days after he separated from his employment with Respondent DMV. Staff testified that the state would pay a greater share of Respondent's health coverage if he were to disability retire than if he were to service retire. Staff further confirmed Respondent is ineligible for health coverage because he retired more than 120 days after he separated from state employment.

Respondent testified on his own behalf. Respondent testified that he decided not to disability retire because he was concerned about how disability retirement would negatively affect his life and future. He did not know that declining to disability retire would disqualify him from health benefits, but even knowing that, he would still choose not to apply for disability retirement. Respondent believed the regulations cited by CalPERS do not disqualify him from receiving health benefits as a service retiree.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent was not eligible to be enrolled in a CalPERS health benefits plan because he did not meet the definition of either employee or annuitant. The ALJ also found that there was no legal basis to find that Respondent may now change his retirement election from service to disability. There was no evidence showing that Respondent's choice was the result of an error or omission, that his error was caused by a mistake, or that he sought to correct the mistake. Therefore, the ALJ concluded that Respondent's appeal is denied.

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 replacing the word "medication" with the word "medical" in paragraph 4 on page 3 of the Proposed Decision.

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

November 20, 2024

Cristina Andrade
Senior Attorney