

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Delia Snipes (Respondent) was employed as a Correctional Officer for California State Prison, Sacramento, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of her employment, Respondent was a state safety member of CalPERS. Respondent's last day on Respondent CDCR's payroll was April 30, 2020.

From March 2020 through May 2021, Respondent communicated with CalPERS, by telephone, on numerous occasions regarding disability retirement. Respondent was provided several copies of the CalPERS Publication 35, "*A Guide to Completing Your CalPERS Disability Retirement Election Application*" (PUB 35), which details the timelines, due dates and forms required to file for disability retirement, and also informed her that if her application is not received by CalPERS within nine months of her last day on payroll, then her retirement date can be no earlier than the first of the month in which CalPERS receives the application. Furthermore, Respondent requested estimates for industrial disability retirement and service retirement. CalPERS sent Respondent her retirement estimates and letters which informed her that she needed to submit her application within nine months of separating employment to receive the earliest retirement date and if she submitted her application more than nine months after separating from employment, then her retirement date can be no earlier than the first of the month in which her application was received.

On May 26, 2021, CalPERS received Respondent's application for service pending industrial disability retirement. Respondent requested an earlier effective retirement date of May 15, 2020.

On February 15, 2022, CalPERS informed Respondent that it was approving her disability retirement based on her internal (dermatitis) condition effective May 1, 2021, the first day of the month in which CalPERS received her application. CalPERS determined that Respondent did not qualify for an earlier disability retirement date back to May 15, 2020, because Respondent did not make a correctable mistake when she submitted her disability application.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). Two days of hearing were held on January 30 and April 5, 2023. Respondent represented herself at the hearing. Respondent CDCR did not appear at the hearing. The ALJ found that the matter could proceed as a default against Respondent CDCR, pursuant to Government Code section 11520.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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 demonstrating that Respondent was informed numerous times about deadlines for submitting her disability application and the consequences of not meeting those deadlines. Further, CalPERS provided her with industrial disability and service retirement estimates and letters, and several copies of PUB 35, which specifically informed her that she should apply for disability retirement as soon as she believed she was unable to perform her usual job duties and that she would need to apply for retirement within nine months of separating from employment if she wanted to obtain a retirement date effective on the date following her last day on payroll.

Respondent testified on her own behalf that she wanted to return to work. She also testified that she was working with Respondent CDCR and filed a workers' compensation claim hoping to gain accommodations to enable her to continue working. She testified that she never returned to work for Respondent CDCR and waited until her workers' compensation matter concluded before she submitted her application.

After considering all of the documentary evidence and testimony of witnesses, the ALJ found that Respondent failed to demonstrate that she is entitled to an earlier effective retirement date under Government Code section 20160. The ALJ found that Respondent was mistaken in thinking she could obtain a retirement date of May 2020, even though she did not submit her application until May 2021, but her mistake is not correctable. The ALJ found "[R]espondent was repeatedly informed by CalPERS of the consequences of not filing her application within nine months of her separation from employment, and, to the extent she was uncertain about this, she failed to make reasonable and timely inquiries to obtain clarification." Accordingly, the ALJ found that Respondent is not entitled to an earlier effective retirement date of May 15, 2020. The ALJ concluded that Respondent's appeal should be denied.

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

June 20, 2023

Helen L. Louie
Attorney