

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Delia Snipes (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated April 26, 2023. For reasons discussed below, staff argues the Board should deny the Petition for Reconsideration and uphold its decision.

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 is a state safety member of CalPERS. Her last day on Respondent CDCR's payroll was April 30, 2020.

From March 2020 through May 2021, Respondent communicated with CalPERS many times 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. CalPERS sent Respondent retirement estimates and letters which informed her that she needed to submit her application within nine months of separating from employment to receive the earliest retirement date, and that if she submitted her application more than nine months after separating from employment, 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 (IDR), and request for earlier effective retirement date.

On February 15, 2022, CalPERS informed Respondent that it was approving her IDR 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 matter proceeded as a default against Respondent CDCR only.

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. 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 that she wanted to return to work, and that she 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.

In her Petition for Reconsideration, Respondent reiterates the same arguments which were considered and rejected by the ALJ. Respondent has presented no new evidence that would alter the ALJ's analysis. The Proposed Decision adopted by the Board at the June 20, 2023, meeting was well reasoned and based on the credible evidence presented at hearing.

For all the foregoing reasons, staff recommends that the Board should deny Respondent's Petition for Reconsideration.

July 19, 2023

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