

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Mark Flores (Respondent) was employed at the Correctional Training Center, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of his employment, Respondent was a state safety member of CalPERS. Respondent's last day on Respondent CDCR payroll was May 15, 2019.

On November 20, 2020, Respondent submitted a Service (SR) pending Industrial Disability Retirement (IDR) application. He requested an earlier effective date of retirement of May 16, 2019. Respondent's IDR was approved on April 23, 2021. However, because his application was received more than nine months after his last day on pay, CalPERS determined that his benefits could not commence earlier than the first day of the month in which the application was received (Gov. Code § 21251).

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 May 31, 2022. Respondent was represented by counsel at the hearing. Respondent CDCR did not appear at the hearing.

CalPERS staff testified at hearing in support of its determination. Staff explained that Respondent was on notice since at least February 2020 that he had to submit his application within nine months of his last day on payroll to be entitled to a retirement date earlier than the first of the month in which the application was submitted.

CalPERS evidence showed that Respondent was provided with information regarding IDR on numerous occasions, beginning in February 2020. Respondent called CalPERS on February 25, 2020, to request information about applying for disability retirement. CalPERS answered his questions over the phone and mailed him a copy of Publication 35 "*A Guide to Completing Your CalPERS Disability Retirement Election Application*" (PUB 35). PUB 35 contains information regarding how to apply for disability retirement, includes all necessary forms to submit an application, and includes instructions to request retirement estimate forms. PUB 35 informs members that they can apply for disability retirement while still employed and that members should apply as soon as they feel unable to perform their usual job duties. PUB 35 specifically informs members that their effective date of retirement will be no earlier than the day following the last day on payroll so long as the application is received within nine months of their last day. If the application is received more than nine months following the last day on payroll, the retirement date can be no earlier than the first of the month in which CalPERS receives the application (Gov. Code § 21251).

CalPERS evidence showed that on February 26, 2020, February 28, 2020, March 5, 2020, March 24, 2020, June 26, 2020, September 18, 2020, October 19, 2020, October 28, 2020 and November 6, 2020, CalPERS answered Respondent's questions regarding his retirement options. CalPERS provided him with several additional copies of PUB 35, blank application forms, and estimates based on a February 2020 retirement date. CalPERS repeatedly advised him to submit his IDR retirement application as soon

as possible, and he was informed that if his application was submitted after nine months, his retirement date would be dated no earlier than the first day of the month during which the application is received. Despite numerous warnings, Respondent waited to submit his application until November 20, 2020. CalPERS notified him that his effective date of retirement would be November 1, 2020.

Respondent requested the earlier effective date of retirement of May 16, 2019. On January 11, 2021, CalPERS wrote to Respondent and Respondent CDCR asking for additional information to assist in determining whether to grant Respondent's request for the earlier effective date. Respondent submitted a response on March 16, 2021, but it did not change CalPERS' determination. Respondent CDCR never responded to CalPERS' inquiries.

CalPERS notified Respondent on April 23, 2021, that his application for IDR was granted, but that his request for an earlier effective retirement date was denied because there had been no correctable mistake.

Respondent testified at hearing that he stopped working in February 2017 following a foot injury, and that his doctors first told him in early 2020 that he would be unable to work again. Respondent claimed that both CalPERS and Respondent CDCR misinformed him about when he could apply for IDR. Respondent testified that he suffered financially in 2019 and 2020, after he exhausted his leave and leave that was donated to him through a catastrophic leave bank, and that he had no income for an extended period of time until he began receiving retirement benefits.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent's failure to submit his application within nine months of his last day on pay with CDCR was not a correctable mistake. Respondent's last day on pay was May 15, 2019. Respondent was aware beginning in February 2020 that he could not return to work at Respondent CDCR. He contacted CalPERS and received information about the process and timeframe for seeking disability retirement, and he was warned that delaying his application would adversely affect the benefits he was entitled to receive. Despite receiving this information, Respondent did not file his application until November 2020. The ALJ found that his delay was not reasonable. Accordingly, the ALJ found he did not meet his burden to establish that he made a correctable mistake (Gov. Code § 20160)

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

September 21, 2022

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