

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Feimata Kamanda (Respondent) was employed as a Licensed Vocational Nurse by California Medical Facility, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of her employment, Respondent was a state safety member.

On October 19, 2020, Respondent submitted her first application for service pending industrial disability retirement (IDR). Her application for IDR was subsequently canceled by CalPERS as an incomplete application. Respondent service retired on December 5, 2020. When confirming her service retirement, CalPERS advised Respondent in writing: "if you want to change your retirement date or cancel your retirement application, you must make the request within 30 days of the issuance of your first retirement check or your choice becomes irrevocable."

Respondent did not inquire about disability retirement again until April 20 and 26, 2021, about 5 months later. CalPERS called Respondent to assist her with submitting her IDR application. CalPERS gave her a list of required documents, and informed her that she must submit all required documents within 21 days of filing her application.

On May 26, 2021, Respondent submitted a second IDR application, requesting to change her retirement status from service to disability retirement. In general, a member cannot change her retirement status after she retires, unless the late application was the result of a mistake, inadvertence, surprise or excusable neglect (Gov. Code § 20160).

On July 19, 2021, CalPERS sent Respondent and Respondent CDCR questionnaires regarding Respondent's request to change from service to disability retirement. Respondent CDCR responded to CalPERS' inquiry, stating that Respondent had not notified Respondent CDCR about a disabling condition, and that she did not leave work due to a disabling medical condition. On August 18, 2021, Respondent responded that her employer was unable to forward the required documents in a timely manner. After a review of the circumstances surrounding Respondent's late application, CalPERS determined she did not make a correctable mistake and canceled her late 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). A hearing was held on October 19, 2022. Respondent represented herself at the hearing. Respondent CDCR did not appear at the hearing.

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. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing, CalPERS presented evidence regarding Respondent's late application, and whether she made a correctible mistake. CalPERS explained that it reviewed all

communications and information pertaining to Respondent's applications. CalPERS' review demonstrated that Respondent had full knowledge of the IDR application process because she had received information about IDR on approximately 20 occasions between 2019 and 2020. CalPERS' evidence showed that Respondent completed at least three 1:1 retirement counseling sessions with CalPERS staff, that CalPERS provided Respondent with numerous copies of PUB-35: *"A Guide to Completing Your CalPERS Disability Retirement Election Application,"* that CalPERS provided her with several retirement estimates, answered numerous phone call inquiries, and advised her in writing not to wait to apply for disability.

Respondent testified that she became ill with Covid-19 in December 2020, and that she became confused and unfocused after enduring long periods of isolation during the pandemic. Respondent also claimed her physician and employer had failed to submit required documents to CalPERS although she had repeatedly requested they do so. Respondent's three children testified on her behalf. They noted a decline in her mental capacity as a result of her isolation, and stated that it was challenging to help her with the application process given the isolation orders.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent's appeal. The ALJ found that Respondent successfully met her burden of proving an excusable mistake had occurred. He noted that Respondent required an interpreter during the hearing but was never provided interpretation services by CalPERS during the numerous communications over the years, finding the utility of CalPERS' efforts materially diminished as a result. The ALJ also found that Respondent had some degree of mental confusion or illness which supported a finding of excusable neglect. The ALJ also noted that Respondent's application was submitted within a reasonable amount of time given that CalPERS did not provide her with notice of her right to correct her errors or omissions within six months after her initial application was canceled.

In the Proposed Decision, the ALJ concluded that CalPERS shall accept as timely and consider Respondent's IDR application.

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 that the citation to "Business and Professions Code" be corrected to "Government Code" on page 9, paragraph 35.

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

January 17, 2023

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