

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION**

Janice M. Adams (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated January 10, 2024. For reasons discussed below, staff argues the Board should deny the Petition for Reconsideration and uphold its decision.

Respondent worked for Coalinga Secure Treatment Facility, California Department of State Hospitals (Respondent DSH) as a Senior Psychiatric Technician. By virtue of her employment, she is a state safety member of CalPERS subject to Government Code section 21151.

On January 26, 2021, Respondent applied for service pending industrial disability retirement (SR pending IDR) based on orthopedic, respiratory, psychological, and urinary conditions. Respondent identified her last date on payroll as December 18, 2013, and requested a retroactive retirement date of December 19, 2013.

By letter dated February 11, 2021, CalPERS informed Respondent that the effective date of her SR was February 1, 2021, the first day of the month in which CalPERS received her application, because her application was received more than nine months after the date she discontinued state service (Gov. Code, § 21252).

On August 10, 2022, CalPERS denied Respondent's IDR application because her medical records did not demonstrate she was substantially incapacitated from her usual duties as a Psychiatric Technician with Respondent DSH.

Also, on August 10, 2022, CalPERS denied Respondent's request for an earlier effective retirement date because Respondent applied for IDR more than nine months after she left employment and review of her file revealed no evidence of a correctable mistake. Based on Respondent's history of contacting CalPERS and Respondent DSH about the disability retirement process between November 2011 and January 2021, CalPERS concluded that "the evidence suggests that you had knowledge of the application process and, therefore, we were unable to establish that a correctable mistake was made."

Respondent appealed CalPERS' determination denying her IDR application and her request for an earlier effective retirement date. She provided additional medical evidence to CalPERS which demonstrated that she was substantially incapacitated from the performance of her usual duties. CalPERS granted her IDR application, retroactive to February 1, 2021.

CalPERS did not change its determination denying her request for an earlier effective retirement date. Respondent appealed this determination and exercised her right to a hearing before an ALJ with the Office of Administrative Hearings (OAH). A hearing was held on December 12, 2023. Respondent represented herself at the hearing.

Respondent DSH did not appear at the hearing and a default was taken as to Respondent DSH 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 documentation of Respondent's application history and testimony of a CalPERS analyst to explain CalPERS' decision. CalPERS' witness testified that Respondent had knowledge of the disability retirement application process since at least 2011. She has a long history of communicating with CalPERS about applying for disability retirement going back to November 2011. In November 2011, Respondent informed Respondent DSH that she was going to apply for IDR and completed some necessary forms. However, her complete application was not received until February 2021 (about 10 years later). Customer Touch Point Notes show that Respondent was sent an IDR application as early as August 2008. She contacted CalPERS by phone, email and visited the Fresno Regional Office with questions about IDR numerous times between April 2010 and February 2021. In April 2017, CalPERS sent her a copy of A Guide to Completing Your CalPERS Disability Retirement Election Application (PUB 35). Respondent also requested and received estimates of her SR, IDR and DR retirement allowance amounts. Considering this history, CalPERS determined that Respondent did not make a correctable mistake pursuant to Government Code section 20160 that would allow it to accept her late application for disability retirement.

Respondent testified that she did not submit her application sooner because she had always hoped she would recover from her disability and return to work. During the COVID-19 pandemic, Respondent concluded her immune system was too weak for her to return to work, so she decided to retire for disability. Respondent further testified that she went back-and-forth with CalPERS about applying for retirement, but she was sick and taking medication, so she could barely sign her name. When she recovered, she found the application process very complicated.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that it was undisputed CalPERS received Respondent's application years after she separated from state service. Consequently, Respondent is entitled to an earlier retirement date only if she can prove she delayed submitting her application due to "mistake, inadvertence, surprise, or excusable neglect" (Gov. Code, § 20160, subd. (a)(2)). The ALJ did not find her supposed physical inability to complete her application, nor her alleged difficulties understanding the application, to constitute a correctable mistake.

The ALJ also found her history of contacting CalPERS and Respondent DSH about IDR provided, or should have provided, her with sufficient information to determine whether she wanted to submit her application when she separated from state service or later, finding that "[s]he cannot second-guess her decision now." Further, the ALJ found that Respondent did not meet her burden of demonstrating she delayed submitting her IDR

application due to mistake, inadvertence, surprise, or excusable neglect, so she is not entitled to an earlier effective retirement date. As a result, the ALJ held that CalPERS correctly denied Respondent's request for an earlier effective date of retirement.

In the Petition for Reconsideration, Respondent restates her testimony and request for an earlier effective retirement due to her "mistake." Respondent does not offer any new evidence that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the February 21, 2024, meeting was well reasoned and based on the credible evidence presented at hearing.

For all the above reasons, staff argues that the Board should deny the Petition for Reconsideration and uphold its decision.

April 16, 2024

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AUSTA WAKILY  
Senior Attorney