

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

The sole issue for resolution in this case is whether John Fogerty (Respondent) timely submitted a complete application for Industrial Disability Retirement (IDR).

On March 7, 2007, Respondent signed and submitted an incomplete Service Pending Industrial Disability Retirement application. The application was missing a required Workers' Compensation Carrier Request Form (PERS-BSD 92).

On April 28, 2007, Respondent's application was automatically cancelled because it was incomplete. Respondent was notified by mail that his application was cancelled.

On May 4, 2007, Respondent emailed CalPERS, asking "My treating physicians have said they submitted the required reports for my injuries. Why has my application been cancelled? What do I need to do to continue the process?" CalPERS immediately responded to his email as follows, "Thank you for contacting Ask CalPERS. Your application for Industrial Disability Retirement (IDR) was canceled because we did not receive a completed Workers Compensation Carrier Request (PERS-BSD 92)."

On May 8, 2007, Respondent called CalPERS to again ask about his IDR application. He was again advised that the IDR application was cancelled due to failure to include the Workers' Compensation Carrier Request. He was advised that he needed to submit an entirely new application package. CalPERS could not reverse the cancellation process because the process was fully automated, and once the computer cancelled an application and created the cancellation letter to Respondent, a new application must be submitted to begin the process anew.

It was not until four and one half years later, November 2, 2011, that Respondent submitted a new application for Service Pending Industrial Disability Retirement.

On June 26, 2012, CalPERS notified Respondent that his second application was denied based on Government Code section 20160. CalPERS found that Respondent had knowledge of the application process in 2007, and no correctable mistake had been made.

At hearing, Respondent testified that he was unaware of the fact that he had only six months to re-submit his application. Respondent admitted that he had no contact with CalPERS from May 8, 2007 until he submitted his new application in November 2011.

CalPERS argued that an ordinary reasonably prudent person in Respondent's position would have inquired concerning any time limitations involved with submitting a new IDR application, and certainly would not have waited four and one half years to re-submit a new package. Government Code section 20160(a)(1) provides that Respondent had six months after discovery of the error to request that it be corrected. That time expired in 2007.

Respondent argued that he should have been exempt from the six-month rule because CalPERS failed to inform him of Government Code section 20160(a). He also argued that CalPERS should not be allowed to enforce the six month rule because he detrimentally relied on CalPERS' failure to warn him of the six-month limitation period.

The Administrative Law Judge (ALJ) found that Respondent was a California Highway Patrol (CHP) officer, who advanced to the rank of Chief. He had gained sophistication in reading and interpreting laws and regulations in the course of employment. He knew, or reasonably should have known, that most governmental forms and/or applications have time limitations and that laws have statutes of limitations. The ALJ reasoned that Respondent is assumed to have known the contents, including the time limitations, of Government Code section 20160. The ALJ also found that Respondent did not establish the elements of estoppel.

The ALJ concluded that Respondent's appeal should be denied: "In sum, respondent cannot sit idly by for four and one half years and then blame CalPERS for a lack of information (the six month limitation period) that is clearly set forth in the Government Code." The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

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ELIZABETH YELLAND
Senior Staff Attorney