

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Robert Ruhr ("Respondent") was employed by the California Department of Corrections, Centinela State Prison as a Correctional Officer until he retired for service effective January 30, 2010. By virtue of his employment, Respondent was a state safety member of CalPERS.

On September 21, 2009, Respondent submitted an application for Service Pending Industrial Disability Retirement. At the time he submitted his application, he met with a CalPERS representative at CalPERS Regional Office, San Diego. He was given pamphlets regarding the application process, including CalPERS' Guide to Completing Your CalPERS Disability Retirement Election Application (Pub-35). The Guide specifies that failure to submit a complete application packet including doctors' documents, would result in his application being canceled. Respondent's first application was incomplete, because he failed to include a necessary Physician's Report on Disability form with his application.

In February 2010, CalPERS canceled Respondent's incomplete application.

On June 17, 2011, Respondent called CalPERS to inquire about the status of his disability application. He was informed it was canceled because it was incomplete. On June 20, 2011, CalPERS sent Respondent a new application and Guide (Pub-35).

On August 16, 2012 (more than a year later), Respondent submitted a second disability application, but it was incomplete and late.

On April 11, 2013, CalPERS wrote Respondent to ask why his application was late and incomplete. On April 29, 2013, Respondent wrote CalPERS responding to the inquiry.

On October 15, 2013, CalPERS notified Respondent that his application was denied because he failed to establish that he made a correctable mistake pursuant to Government Code section 20160. Respondent appealed.

Hearing on the matter was completed December 3, 2014. Respondent was not represented by counsel at hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his 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, Respondent testified that he was unaware that his first application was canceled. He acknowledged that when he did learn it was canceled, it took him another year to file a second application.

The Administrative Law Judge (ALJ) found that an ordinarily reasonably prudent person in Respondent's position would have inquired concerning any time limitations involved with submitting a new application and certainly would not have waited approximately 1 year to re-submit.

The ALJ held that Respondent erred in not submitting a new application packet within the six months of the June 17, 2011 date when he was advised that his 2009 application had been canceled due to material omission of information, and that he needed to submit an entirely new, complete, disability retirement packet. Government Code section 20160 establishes the requirement that a member make reasonable efforts to obtain information about time restrictions. In particular, Government Code section 20160 (a)(3) provides a member's failure "to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute" a correctable error or omission.

The ALJ concluded that Respondent's appeal should be denied. 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. If the Board adopts the Proposed Decision, 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