

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION AFTER REMAND**

This case was originally heard on December 3, 2014. After receiving evidence, the matter was submitted and a Proposed Decision was issued. The issue at hearing was whether Respondent Robert Ruhr ("Respondent") made a correctable mistake that would allow him to submit a new application for Industrial Disability Retirement after his previously submitted application was canceled. The Administrative Law Judge (ALJ) denied Respondent's appeal, and the matter was placed before the Board. The Board remanded the matter for taking additional evidence. The parties were given an opportunity to submit additional written briefs, and the Proposed Decision After Remand was issued on June 8, 2015.

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.

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.

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.

The ALJ analyzed all evidence submitted at the original hearing and on remand. After review, the ALJ found that Respondent made an error/omission in his 2009 application by not including all necessary forms. In June 2011, he was informed his application had been canceled due to this error/omission. The ALJ found that this original error/omission was excusable, and he was entitled to the relief afforded by Government Code section 20160.

However, the ALJ also found that once he learned of the error/omission, Respondent only had six months to correct it under Government Code section 20160. The ALJ found that although Respondent was unaware that his second application was subject to the six-month limitation, his lack of knowledge about the timing does not help him.

The ALJ held that while a mistake of fact is usually a defense, a mistake of law is not, citing the common axiom "ignorance of the law is no excuse." The ALJ found that Government Code section 20160 establishes a clear, firm, six-month time limit within which a member must correct an error/omission. No evidence or authority was introduced at the original or remanded hearing that supported a deviation from that six-month limitation. The ALJ found that when Respondent submitted his second application 14 months after learning of his error/omission, he did so 8 months too late.

The ALJ confirmed the first Proposed Decision that CalPERS correctly determined Respondent's 2012 application for an Industrial Disability Retirement was untimely, and that CalPERS properly denied Respondent's 2012 application on that basis.

The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision After Remand is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision After Remand.

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

August 19, 2015

  
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