

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Shane Mee (Respondent Mee) worked as an equipment operator for Respondent California Department of Transportation (Respondent Caltrans). By virtue of his employment, Respondent Mee was a state miscellaneous member of CalPERS.

In 2013, Respondent Mee applied for and received industrial disability retirement from CalPERS effective March 1, 2012, on the basis of an orthopedic (back) condition. Later in 2013, Respondent Mee wrote CalPERS requesting that the effective date of disability retirement be moved from March 1, 2012, to January 1, 2007, the day after Respondent Mee's last day on payroll with Respondent Caltrans. CalPERS denied the request, and Respondent Mee appealed. A one-day hearing was held in Redding, California on February 25, 2016. Counsel appeared on behalf of CalPERS. Respondent Mee was represented by his wife, Renee Mee. Respondent Caltrans did not appear.

Prior to the hearing, CalPERS explained the hearing process to Respondent Mee, and the need to support his case with witnesses and documents. CalPERS provided Respondent Mee with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Mee's questions and clarified how to obtain further information on the process.

Pursuant to the California Public Employees' Retirement Law (PERL), the effective date of a member's disability retirement depends upon the timeliness of the member's application. For a member who applies for disability retirement within nine months of separating from public service, disability retirement begins on the last date the member was on payroll. Applications submitted more than nine months after separation from service are deemed effective the first date of the month the application was received. (Cal. Gov. Code §21252(a).)

CalPERS has the discretion to correct the effective date of a member's disability retirement. However, such discretion arises only where the member makes the request within six months of learning of the error, and proves to CalPERS that the error was the result of "mistake, inadvertence, surprise, or excusable neglect." (Gov. Code §20160.)

At hearing, Respondent Mee testified that he believed he could not retire for disability until he reached age 50, which occurred in 2012. However, CalPERS presented documentary and testamentary evidence at hearing showing that Respondent Mee contacted CalPERS and received disability retirement estimates in 2006 and 2008. Both estimates were calculated based upon disability retirement before age 50.

The Administrative Law Judge (ALJ) considered all the evidence, and found that Respondent Mee did not make an error that CalPERS could correct pursuant to Government Code 20160. Respondent Mee's mistake, according to the ALJ, was that he believed he could not retire for disability until he reached age 50. The ALJ ruled that "Respondent [Mee] did not inquire as a reasonable person would have done under similar circumstances" based on the written information he received from CalPERS.

