ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

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

The Respondent worked as a CHP officer for more than 30 years and was required to retire upon reaching age 60. Prior to retirement Respondent injured his back and had an open workers' compensation case with SCIF. On March 5, 2007, Respondent signed and submitted a Service Retirement application. At the time of filing Respondent was counselled by CalPERS staff about IDR and he was given an IDR application package. Respondent declined to file an IDR application stating he wanted to speak with his lawyer before he filed for IDR.

On April 2 and April 23, 2007 Respondent called CalPERS asking questions about disability retirement and workers' compensation. On October 16, 2012 Respondent wrote a letter to CalPERS that according to his workers' compensation doctor he was now "permanent and stationary" and he wanted to change his service retirement to IDR. Respondent stated that he believed he could not file for IDR until his injury was deemed permanent and stationary.

On January 28, 2013, almost six years after his retirement, Respondent filed an IDR application requesting an effective date of May 1, 2007. On July 17, 2014 CalPERS determined that Respondent had not made a correctable mistake and denied his application.

At hearing, Respondent testified that he was unaware of the fact that he would be unable to change his retirement from service to IDR after his first warrant had been issued. Respondent further argued that he was counseled by "Janise Truelock" of CalPERS that he had to be permanent and stationary before he could apply for IDR.

CalPERS argued that Respondent was on notice at the time he filed for service retirement about the option of filing for IDR as he was counselled by CalPERS staff and was given an IDR application which contained the language "If you have a workers' compensation claim, you should not wait until your condition is 'permanent and stationary' under workers' compensation requirements to submit your application." Respondent also called CalPERS after he applied to ask follow up questions about workers' compensation and disability retirement.

CalPERS was able to establish that Ms. Truelock was not an employee of CalPERS but was a personnel supervisor at CHP and any misinformation she may have provided to Respondent was not the fault of CalPERS.

The Administrative Law Judge (ALJ) found that a reasonable person with a potential claim for IDR would have made inquiries about his options prior to making a binding election. Further, Respondent, by virtue of his counselling at the time of retirement,

numerous telephone calls to CalPERS and the information contained in the IDR application package, was on notice of the IDR option.

The ALJ concluded that Respondent's appeal should be denied: "By collecting SRE [service retirement] benefits for almost six years, respondent Hoffpauer effectively waived his right to IDR benefits." 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.

May 18, 2016

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