

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Medene Presley (Respondent Presley) worked as a Correctional Officer for Respondent California Department of Corrections, California State Prison Solano (CDCR). By virtue of his employment, Respondent Presley is a state safety member of CalPERS.

On July 9, 2010, CalPERS received a Service Pending Industrial Disability Retirement Application (First Application) from Respondent Presley. The First Application was canceled as a result of Respondent Presley not providing CalPERS with the required workers' compensation information. Because the First Application was canceled, Respondent Presley received only the service benefits afforded to him as a result of his CalPERS membership. On October 17, 2012, Respondent Presley submitted to CalPERS another Service Pending Industrial Disability Retirement Application (Second Application).

On April 4, 2013, CalPERS sent a letter to Respondent Presley requesting information regarding the circumstances surrounding his retirement and the reason(s) for the delay in requesting the change from service to industrial disability retirement status. Respondent Presley sent a letter of explanation to CalPERS containing different explanations. After reviewing the information, CalPERS determined that Respondent Presley failed to demonstrate that the delay was a correctable error or omission as a result of inadvertence, mistake, surprise or excusable neglect. For this reason, CalPERS did not accept the Second Application, and Respondent Presley appealed CalPERS' determination. A one-day hearing was held before an Administrative Law Judge (ALJ) at the Office of Administrative Hearings in Sacramento, California on March 23, 2016.

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

At the hearing, CalPERS presented evidence that Respondent Presley knew, or should have known, that the First Application had been canceled and that he needed to reapply to receive industrial disability retirement benefits. CalPERS' evidence also showed that Respondent Presley was provided with the timelines for him to timely reapply to receive industrial disability retirement benefits. CalPERS argued that pursuant to Government Code section 21453, Respondent Presley was required to reapply for industrial disability retirement within thirty (30) days of being informed that his First Application was canceled. This is because he was seeking a change in his retirement status, from service to industrial disability retirement. Furthermore, CalPERS argued that Respondent Presley's failure to reapply within six (6) months of the expiration of the

thirty-day deadline for seeking a change in retirement status rendered his actions unreasonable pursuant to Government Code section 20160.

Respondent Presley presented evidence at the hearing that he was never notified in writing that his First Application has been canceled, or informed that he had a limited amount of time to reapply for industrial disability retirement benefits. In addition, he testified that he did not file his Second Application until October 17, 2012, because he was waiting for something in writing from CalPERS regarding his First Application. Respondent Presley testified that he has continuously been disabled since his retirement date and that he never sought to change his July 9, 2010, request for industrial disability retirement benefits.

The ALJ found that CalPERS unilaterally canceled Respondent Presley's First Application and there was no direct evidence that CalPERS timely informed Respondent Presley of the cancellation, or the deadline by which he needed to reapply for the change in retirement status to be considered timely. Because it was CalPERS' unilateral actions that resulted in the First Application being canceled, and not an election by Respondent Presley to seek a change in his retirement status, the ALJ found that Government Code section 21453 did not apply.

The ALJ also found that Respondent Presley's First Application was submitted within four months after he discontinued state service; therefore, the First Application was filed within the deadline set forth in Government Code section 21154(c). Furthermore, the ALJ found the evidence established, by virtue of Respondent Presley's assertions, that he has been incapacitated from working as a Correctional Officer since he left state service. The ALJ concluded that Respondent Presley's assertions are sufficient to establish the Second Application was timely under Government Code section 21154(d).

The ALJ concluded that Respondent Presley's appeal should be granted and Respondent Presley's Second Application should be accepted by CalPERS and reviewed on the merits to determine whether Respondent Presley should be granted industrial disability retirement 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. Since the member prevailed, it is not likely that he will file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

June 15, 2016



JOHN SHIPLEY
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