

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

**STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Respondent Margaret Wise (Respondent) was employed by Respondent Mt. Diablo Unified School District (District) as a campus supervisor. The District contracts with CalPERS to provide retirement benefits for the District's employees. By virtue of her employment, Respondent was a miscellaneous member of CalPERS. Respondent submitted an application for service retirement on March 12, 2015, after being medically separated from the District in October 2014. She received her first warrant for her service retirement benefit on July 6, 2015, and filed an application for disability retirement on the basis of claimed orthopedic (ankle) condition on October 21, 2015. CalPERS' staff reviewed Respondent's request and determined that Respondent had failed to file her disability application prior to her service retirement or within 30 days of that service retirement as required by Government Code Section 21453. Staff determined that Respondent did not qualify for relief from this mistake under Government Code Section 20160, which authorizes CalPERS to correct errors or omissions of retirees under certain conditions of reasonable error. Respondent appealed CalPERS staff's determination and a hearing was held on June 6, 2016.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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. Respondent was represented by an attorney at the hearing.

Respondent testified at the hearing, describing her employment, injury and lengthy period off work while she pursued a disputed workers' compensation and reasonable accommodation claim. She testified that the conflict with her employer was very upsetting to her, and caused her to be hesitant to deal with difficulties in the retirement process. She explained that on December 30, 2014, she met with a CalPERS representative who told her that the difference between Service Retirement and Disability Retirement benefit would only be \$20-\$30 per month, but significantly more work and time to file and process. She testified that the representative discouraged her from pursuing the disability retirement application, so she decided not to pursue the disability application. Respondent testified that at that time she also requested CalPERS provide her with her service and disability retirement benefit estimates.

Respondent testified that after she received her service retirement estimate in March 2015, she completed and turned in the application for service retirement on April 14, 2015. When she received her disability retirement estimate on April 16, 2015, which showed her disability pension to be \$300.00 per month more than her service retirement amount, she immediately called CalPERS, and spoke to a representative to change her request to a disability retirement. Respondent testified that the representative informed her that she had to wait until after she received her first retirement benefit check to apply for a change from service to disability retirement.

After receiving her first check in July, she did not immediately turn in the disability retirement application because many items were required to be turned in. She continued to work on obtaining her medical records and other documents, completing and eventually turning her disability application in October 2015.

CalPERS' staff testified that Respondent was informed in a telephone call on October 15, 2014, that there is a longer processing time for disability retirement applications than service retirement applications. Staff testified that on December 30, 2014, Respondent was informed again that there was a longer processing time for disability applications. At that meeting, Respondent was also provided blank disability and service retirement applications, but would not have been informed of a specific amount difference between those pensions without a formal estimate. Staff also provided a letter CalPERS sent to Respondent on April 21, 2015, informing her of the need to apply for disability retirement before becoming a service retiree, as was clearly stated. Waiting to file her disability application until after her first service retirement was in effect was untimely, staff testified.

Respondent acknowledged receiving and reading that letter. She testified that she disregarded that notice as a form letter and decided to rely on the telephone conversation wherein she understood she could apply after the first benefit check was received.

After considering all of the evidence and testimony, the ALJ found that "Respondent testified credibly that if she had known" the disability application timeline and had not been confused by the information from the CalPERS telephone staff, she would have filed in time. The ALJ noted that "Respondent clearly intended to apply for disability retirement as of April 12, 2015, but misunderstood the deadlines; this error is correctable under Government Code section 20160." The ALJ determined that the Respondent's disability application was filed in a reasonable amount of time after discovery of Respondent's error.

Accordingly, the ALJ concluded that Respondent established that she is entitled to relief from a correctable error and her appeal should be granted. 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 she prevailed, the member is not likely to file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

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