

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Brandi L. Dominguez (Respondent Dominguez) was employed by Respondent California State Prison-Sacramento, California Department of Corrections and Rehabilitation (CDCR) as an Office Technician. By virtue of her employment, Respondent Dominguez was a state industrial member of CalPERS. On June 9, 2014, Respondent submitted a Disability Retirement Election Application. Respondent Dominguez requested an earlier effective retirement date of May 1, 2012. CalPERS' staff (Staff) reviewed medical reports regarding Respondent's condition and secured information from both CDCR and Respondent Dominguez regarding her request for an earlier effective retirement date. By separate letters, both dated February 6, 2015, CalPERS staff advised Respondent Dominguez that A) her application for industrial disability retirement had been approved, effective June 1, 2014, and B) her request for an earlier effective retirement date had been denied. Respondent Dominguez appealed Staff's denial of her request for an earlier effective retirement date and the matter was the subject of a hearing before an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) on July 21, 2016.

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

At the hearing, it was established that CalPERS had provided proper and adequate notice of the hearing to both Respondent Dominguez and CDCR. Respondent Dominguez did not appear at the hearing and there was no representative of CDCR at the hearing. Accordingly, the ALJ declared a default against both Respondent Dominguez and CDCR, pursuant to Government Code section 11520.

At the hearing the ALJ received documentary evidence and testimony from the CalPERS witness describing the course of communication between Staff and Respondent regarding industrial disability retirement.

- On January 6, 2011, Respondent Dominguez contacted CalPERS and requested information regarding disability retirement. CalPERS staff sent an estimate and the standard disability retirement brochure, which included a Disability Retirement Election Application, to Respondent Dominguez.
- On July 16, 2012, Respondent Dominguez contacted CalPERS with questions regarding disability retirement. Staff answered Respondent Dominguez's questions and sent her a second disability retirement estimate and application packet.
- On November 23, 2012, Respondent Dominguez contacted CalPERS and advised that she would be submitting an application for disability retirement.

- On December 16, 2013, Respondent Dominguez submitted an application for industrial disability retirement.
- Staff began processing Respondent Dominguez's application for industrial disability retirement but could not complete the review because Respondent Dominguez had failed to submit a complete application. Staff rejected Respondent Dominguez's application because the last page, which would contain the signatures of Respondent Dominguez, her spouse and either witnesses or a notary's signature were missing.
- On December 18, 2013, Staff sent a letter to Respondent Dominguez advising her that her application had been rejected and stating the reason for the rejection.
- On May 6, 2014, in a conversation with Respondent Dominguez, Staff advised Respondent to submit a new application, complete with all necessary signatures.
- On June 9, 2014, Respondent Dominguez submitted a second application for industrial disability retirement and requested an effective retirement date of May 1, 2012. Staff approved Respondent Dominguez's application for industrial disability retirement but denied her request to use May 1, 2012, as the effective date of her retirement.

After considering all of the documentary evidence and testimony, the ALJ concluded:

Respondent stopped working in state service on May 1, 2013. She filed her first application on December 16, 2013, [more than 7 months later] which was rejected due to a missing signature page. She then filed another application on June 2, 2014, more than nine months after she discontinued state service. Pursuant to section 21252, subdivision (a), the effective date of her application was the first day of the month in which her application was received, which was June 1, 2014. To qualify for an earlier retirement date of May 1, 2013 [NOTE: Should refer to date of May 1, 2012], respondent had the burden to present documentation or other evidence establishing the right to correction pursuant to section 20160. As set forth in Findings 12 to 14, respondent did not demonstrate that her failure to timely file her disability application was the result of mistake, inadvertence, surprise, or excusable neglect correctable by section 20160, entitling her to an earlier effective retirement date. Her appeal of CalPERS' denial for an earlier effective date of retirement must, therefore, be denied.
(See Legal Conclusion No. 3.)

The ALJ concluded that Respondent Dominguez's appeal should be denied.

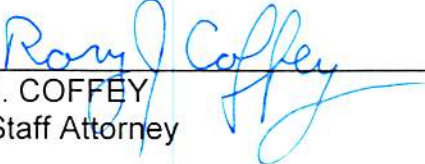
Pursuant to Government Code section 11517(c)(2)(c), which authorizes the Board to "make technical or other minor changes in the proposed decision", staff recommends that the following corrections be made to the Proposed Decision:

- 1) Change the date next to the ALJ's signature on page 5 from "July 28, 2015" to July 28, 2016; and
- 2) Change the date of "May 1, 2013", set forth on page 5, paragraph 3, line 6, to "May 1, 2012."

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 motion with the Board under Government Code section 11520(c), requesting that, for good cause shown, the Decision be vacated and a new hearing be granted.

September 21, 2016



RORY J. COFFEY
Senior Staff Attorney