

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

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

The sole issue for resolution in this case is whether Respondent Joseph Chapa (Respondent) made a correctable mistake which would have entitled him to retroactively change his retirement status from service retirement to Industrial Disability Retirement (IDR).

On September 20, 2013, Respondent signed and submitted a service retirement application. On September 23, 2013, CalPERS acknowledged receipt of the service retirement application, and informed Respondent:

You may be entitled to receive a disability retirement if you are unable to work because of an illness or injury. To request a service pending disability retirement, you must complete a Disability Retirement Election Application.

Respondent retired on December 27, 2013, and has been receiving a service retirement allowance from that date.

On January 17, 2014, Respondent filed a workers' compensation claim for bilateral knee pain.

Sometime prior to May 15, 2014, Respondent received and reviewed CalPERS' "Guide to Completing Your CalPERS Disability Retirement Election Application" (PUB-35). The Guide has a specific section on workers' compensation claims, which states:

If you have a workers' compensation claim, you should not wait until your condition is considered "permanent and stationary" under workers' compensation requirements to submit your [IDR] application.

A workers' compensation award does not automatically entitle you to a CalPERS IDR. Medical evidence will be required to show that you meet the CalPERS' definition of disability. If you do, your workers' compensation award for the same illness or injury may be used as evidence that your condition is job-related.

On May 15, 2014, Respondent sent a Workers' Compensation Carrier Request form to the State Compensation Insurance Fund (SCIF), requesting that SCIF fill it out and provide the required documents to CalPERS in support of his IDR Application.

On August 11, 2015, Respondent submitted his IDR application to CalPERS, with a letter explaining the late filing of the IDR application. Respondent explained:

The reason this application is late is because I was not aware of early intervention referral. A friend referred me to Daniel M. Price – California Consulting Services who advised me and assisted me with this documentation.

Respondent claimed IDR based on orthopedic conditions (knee and back).

On September 1, 2015, CalPERS sent Respondent a questionnaire requesting additional information regarding his IDR application, because his IDR application was a “change in retirement status” and not filed timely, pursuant to Government Code sections 21154, 21252 and 20340.

On October 26, 2015, CalPERS notified Respondent that his request to change from service to IDR was denied because he had knowledge of the application process when he service retired, and no correctable mistake was made per Government Code section 20160. Respondent appealed.

A hearing was completed on August 2, 2016. Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his 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.

At the hearing, CalPERS argued that Respondent became aware of his right to file an IDR application under the mistake provisions of Government Code section 20160 in May 2014, when he met with an Early Intervention Referral consultant from CDCR. In his responses to the questionnaire to CalPERS, Respondent admitted he knew as of May 2014 that he could file for IDR. CalPERS also argued that Respondent took affirmative steps to start the process of filing for IDR in May 2014, when he sent a letter to SCIF asking for support for his IDR Application.

Respondent argued that he believed he had to wait for his workers' compensation findings before he could apply for IDR. He claimed he first knew he was eligible for IDR in April 2015, when his injury was found to be work-related. Respondent argued that he filed his IDR application within 6 months of April 2015.

The Administrative Law Judge (ALJ) found that Respondent filed his service retirement application on September 20, 2013. On December 27, 2013, he retired for service. On January 17, 2014, he filed a Worker's Compensation (WC) claim for his knees. In April 2014, his claim was accepted by SCIF. In May 2014, when Respondent met with an Early Intervention Referral consultant, he was aware of PUB-35, and took steps to begin filing an IDR application by sending his letter to SCIF.

Considering the above, the ALJ concluded that Respondent was aware of a possible IDR in January 2014, when he filed his WC claim. In May 2014, he was aware of IDR application requirements when he met with the Early Intervention Referral specialist.

Even still, he waited to submit his IDR application until August 11, 2015. At no time between May 2014 and August 10, 2015, did he confirm his understanding of the IDR application process with CalPERS.

The ALJ found that a reasonable person with a known disability, aware that he could file an IDR application but believing he was precluded from filing his application until his workers' compensation claim was resolved, would have sought to clarify and confirm his understanding with CalPERS. (Gov. Code §20160(a)(3)) Since there was no evidence that Respondent made any inquiries after May 2014 but before August 2015, Respondent's failure was not an error or omission that was the result of mistake, inadvertence, surprise, or excusable neglect. Respondent had sufficient information to make an educated decision about when and how to file an IDR application, and acted upon that information by immediately sending a letter to SCIF. Then, he waited 14 months to file his IDR application.

The ALJ concluded that Respondent's appeal should be denied: "When all the evidence is considered, Respondent did not show that he should be allowed to file his IDR application." 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.

November 16, 2016

  
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