

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

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

The sole issue for resolution in this case is whether Michael Porter (Respondent) should be provided an earlier effective date for Industrial Disability Retirement (IDR).

Respondent worked as Correctional Officer for California State Prison – Los Angeles County, California Department of Corrections and Rehabilitation (CDCR). In March 2012 Respondent was injured during a training exercise. On May 21, 2014, Respondent was seen by an Agreed Medical Examiner (AME) who advised Respondent to apply for disability retirement. Respondent told the AME he would apply.

On March 1, 2013, August 21, 2014 and February 19, 2015 CDCR sent letters to Respondent enquiring about the status of his disability. The letters also advised Respondent of his employment options, including filing for disability retirement. On August 18, 2015, Respondent signed an application for industrial disability retirement requesting an effective retirement date of April 30, 2014. CalPERS determined Respondent's industrial disability retirement application to be late for the purposes of an April 30, 2014 effective retirement date.

On December 29, 2015, CalPERS notified Respondent of its determination that no correctable mistake had been made pursuant to Government Code section 20160, which allows for the correction of an error or omission which is the result of inadvertence, mistake, surprise or excusable neglect. On January 22, 2016 Respondent appealed CalPERS' determination.

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.

A hearing was held in this matter on September 29, 2016 and Respondent did not appear. CalPERS presented testimony from one witness, an employee from CDCR.

The Administrative Law Judge (ALJ) found that Respondent had been put on notice about his ability to apply for disability retirement on May 21, 2014 when the AME advised Respondent to apply and later on March 1, 2013, August 21, 2014 and February 19, 2015 when CDCR sent him letters outlining his employment options, including his right to apply for disability retirement. The ALJ ruled that Respondent is not entitled to an earlier effective retirement date because Respondent presented no evidence indicating he made a correctable error or omission within the meaning of Government Code section 20160 that would allow him to claim an earlier retirement date retroactive to April 30, 2014. 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.

December 21, 2016



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