ATTACHMENT B

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

Randy W. Ellis (Respondent) was employed as a Psychiatric Aide II by Respondent County of Tehama (Respondent County). By virtue of his employment, Respondent was a local miscellaneous member of CalPERS subject to Government Code section 21150. Respondent has the minimum service credit necessary to qualify for retirement.

On May 27, 2015, Respondent resigned from employment with Respondent County, effective June 1, 2015. On June 29, 2016 (thirteen months later), Respondent signed an application for disability retirement on the basis of a neurologic condition, requesting an effective retirement date of June 1, 2015. CalPERS received Respondent’s application on July 5, 2016.

CalPERS informed Respondent that it was approving his disability retirement based on his neurologic condition by letter dated November 23, 2016. The effective date of retirement was July 1, 2016. After a review of the reports and information and after considering Government Code section 20160 and other applicable precedents, CalPERS determined that no correctable mistake had been made to allow CalPERS to change Respondent’s retirement date to an earlier retirement date of June 1, 2015. CalPERS notified Respondent and Respondent County of its determination and their right to appeal by letter dated November 23, 2016.

In its determination letter advising Respondent of his November 23, 2016 retirement date, CalPERS stated:

The effective date of your retirement cannot be earlier than the day following the last day of sick leave with compensation or earlier than the first day of the month in which the application is received. The retirement effective date would be either the day after expiration of your sick leave credit or if the application is filed within nine months of the discontinuance of service, the application shall be deemed filed on the last day for which salary was payable. You may request an earlier retirement date if these circumstances do not apply.

(Italics in original letter.)

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on July 18, 2017. Neither Respondent nor Respondent County appeared at the hearing.

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.
CalPERS' staff testified at the hearing, as to its review of the applicable code sections governing effective retirement dates. Government Code section 21252(a) is applicable, and in relevant part states:

(a) A member’s written application for retirement, if submitted to the board within nine months after the date the member discontinued his or her state service, and, in the case of retirement for disability, if the member was physically or mentally incapacitated to perform his or her duties from the date the member discontinued state service to the time the written application for retirement was submitted to the board, shall be deemed to have been submitted on the last day for which salary was payable. The effective date of a written application for retirement submitted to the board more than nine months after the member’s discontinuance of state service shall be the first day of the month in which the member’s application is received at an office of the board or by an employee of this system designated by the board.

Staff testified that Respondent separated from service more than 13 months prior to his retirement application. Because Respondent’s delay in applying for disability retirement was more than nine months after separation, his application was deemed to have been submitted on the first day of the month in which CalPERS received the application. Since Respondent’s application was received on July 5, 2016, his effective date of retirement was July 1, 2016.

In analyzing whether a correctable mistake occurred, staff analyzed the matter under Government Code section 20160. The documents reviewed by staff indicated that Respondent was advised in multiple accommodation meetings with Respondent County of his disability retirement options. In answering a questionnaire sent to him by CalPERS, Respondent confirmed that he knew of his disability retirement options prior to separating from employment. Hence, staff concluded that there was no correctable mistake.

After considering all of the evidence, the ALJ denied Respondent’s appeal. The ALJ found that Respondent had the burden to present evidence establishing a correctable mistake under Government Code section 20160, and respondent did not meet his burden.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

September 20, 2017

CHARLES H. GLAUBERMAN
Senior Staff Attorney