ATTACHMENT B

STAFF'S ARGUMENT
STAFF’S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Respondent Vera Elliott (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge’s (ALJ) Proposed Decision dated May 12, 2017. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the August 16, 2017, meeting was well reasoned and based on the credible evidence presented at hearing.

The issue presented by Respondent’s appeal was:

"...whether [Respondent] Elliott made a mistake which was the result of inadvertence, mistake, surprise or excusable neglect correctable by Government Code section 20160, which would have entitled her to retroactively change her retirement status from service retirement to disability retirement."

Nowhere in Respondent’s Petition for Reconsideration does she demonstrate the existence of any inadvertence, mistake, surprise or excusable neglect that would entitle her to relief. The ALJ’s summary of the evidence presented at the hearing remains unchallenged by Respondent’s Petition for Reconsideration.

13. Respondent’s injury occurred on March 27, 2007. She service-retired on December 3, 2009, and waited until February 23, 2010, to submit her application for a change in retirement status to disability retirement. Her application was incomplete, and was subsequently cancelled by CalPERS. Respondent re-submitted her application on April 2, 2013, which was again incomplete, and was cancelled by CalPERS. Respondent resubmitted a new application on March 23, 2015, citing additional specific disabilities. Respondent asserted that she had difficulties in finding a doctor that would accept her as a worker’s compensation patient, and therefore could not complete the Physician’s Report on disability in a timely manner. Respondent’s argument is unpersuasive, as [Respondent] did not need a worker’s compensation doctor to evaluate her condition under CalPERS’ disability standards. Respondent could have seen her general practitioner or an orthopedic doctor under her own medical insurance to evaluate her knee at the time she filed her CalPERS disability application.
(See Discussion No. 13; Emphasis added.)
14. Respondent also asserted that the delay in her application was due to surprise, in that she was surprised to learn that she needed to comply with applicable deadlines. **Respondent’s argument is unpersuasive.** Respondent could have, at any time, referred to the CalPERS Guide, which would have informed her of critical information regarding her disability retirement application. She admitted that she did not read it, and if she did, she conceded that it would have been helpful. (See Discussion No. 14; Emphasis added.)

15. Moreover, [Respondent] asserted that her failure to timely file her application was the result of surprise, in that she was surprised that she had a herniated disc in 2014, and that this was a correctable mistake. However, [Respondent] did not present documentation or other evidence that her delayed diagnosis of a herniated disc was an unforeseeable consequence of her knee injury, causing surprise seven years later. Even if an exception can be made for a mistake caused by surprise, [Respondent] did not establish that she made her request within six months of learning of her herniated disc. (See Discussion No. 15; Emphasis added.)

The ALJ concluded that Respondent’s appeal should be denied. Respondent’s grounds for reconsideration in her petition are based on disagreement with the ALJ’s findings of fact and legal analysis. With respect to Respondent’s disagreement with the ALJ’s findings and analysis, it is clear from the Proposed Decision that evidence was taken, and numerous exhibits were submitted. Evidence was taken on the underlying facts and Respondent’s claims. The ALJ simply found against Respondent. Respondent has not raised any new evidence or change in circumstances in her Petition which would warrant reconsideration.

For all the foregoing reasons, Staff recommends that the Board deny the Petition for Reconsideration.

September 20, 2017

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