ATTACHMENT B

STAFF’S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION ON REMAND

Sigrid O. Lintag (Respondent) was employed as an Office Technician with Respondent Division of Adult Parole Operations, California Department of Corrections and Rehabilitation (Respondent CDCR). In November 2013, Respondent was injured at work. After utilizing the workers’ compensation system, Respondent was cleared to resume work in December 2014. Respondent’s treating physician disagreed with the workers’ compensation physician and restricted her from returning to work.

In January 2015, Respondent participated in retirement counseling to learn about her options. Regional Office team members counseled Respondent on service retirement versus disability retirement as well as a conversion of Tier 2 service credit into Tier 1 and whether that would be beneficial if Respondent disability retired. Respondent was informed that a tier conversion would have no impact on a disability retirement but would increase her benefit amount if she service retired. Respondent eventually decided to proceed with the tier conversion.

Respondent submitted a service retirement application on January 29, 2015, effective January 30, 2015. Respondent was 60 years old at the time.

On October 3, 2016, Respondent submitted an application for disability retirement with an effective retirement date relating back to the service retirement date of January 30, 2015. CalPERS team members contacted Respondent to inquire about the reason she wanted to change her retirement status. Respondent admitted that at the time she applied for service retirement she believed herself to be disabled but desired to return to Respondent CDCR as a retired annuitant. Respondent further admitted that after some months into her retirement, when she did not get better, she decided she should apply for disability retirement.

After Respondent provided information, CalPERS determined that the disability retirement application was untimely and that Respondent does not meet the criteria necessary under Government Code section 20160 that allows for the correction of a mistake (i.e. not filing for disability retirement at the time she service retired) because no correctable mistake had been made to allow CalPERS to accept her late application.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. A hearing was held on November 6, 2017. Respondent represented herself at the hearing. Respondent CDCR did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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.
Respondent testified on her own behalf. Respondent testified as described above; that, prior to applying for service retirement, she was counseled on her options and chose to service retire rather than disability retire because she intended to return to employment as a retired annuitant.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ correctly found that Respondent was aware of the option to file for disability retirement at the time she filed for service retirement and that she did not demonstrate that her failure to timely file the disability application was the result of mistake, inadvertence, surprise or excusable neglect per section 20160.

The Proposed Decision that was issued after the November 6, 2017, hearing (First Proposed Decision), incorrectly cited and relied upon a provision of Government Code that had been amended in 2009. While the net result of the First Proposed Decision was correct and the analysis pursuant to Government Code section 20160 was correct, the ALJ clearly relied on outdated authority to arrive at the section 20160 analysis.

At the February 14, 2018, Board of Administration meeting, the Board remanded the First Proposed Decision back to the Office of Administrative Hearings for the taking of additional evidence regarding Government Code section 21252. A second hearing was held on July 16, 2018.

The evidence presented at the remand hearing demonstrated that removal of the outdated portion of Government Code section 21252, subdivision (a), does not affect the outcome of the First Proposed Decision. The ALJ found that Respondent failed to present evidence to warrant changing the factual findings or legal conclusions set forth in the First Proposed Decision, other than removing the outdated citation to section 21252.

As a result of the remand hearing, the ALJ issued a Proposed Decision on Remand that fully restates the original analysis from the First Proposed Decision with the removal of the outdated portion of section 21252.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. For all the above reasons, staff argues that the Proposed Decision on Remand be adopted by the Board.

September 26, 2018

ELIZABETH YELLAND
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