ATTACHMENT B

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

Respondent Brian A. Dalhover (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge’s (ALJ) Proposed Decision dated September 4, 2018. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

Respondent was employed as a Psychiatric Technician by Respondent Department of State Hospitals - Metropolitan LA (Respondent DSH - Metropolitan). By virtue of his employment, Respondent is a state safety member of CalPERS.

Respondent applied for industrial disability retirement (IDR) on July 6, 2017, based on an “abdominal with chronic pain” condition. In the application, Respondent requested a retirement effective date of "expiration of benefits," which was May 1, 2011.

Respondent DSH - Metropolitan sent a letter to Respondent to schedule an interactive process meeting to discuss his employment options on April 5, 2016. The letter listed various options including returning to work, separation from state service by disability retirement, service retirement and medical termination.

On April 6, 2016, Respondent DSH - Metropolitan met with Respondent for an interactive process meeting. During the meeting, Respondent was made aware of service retirement and disability retirement options.

Respondent contacted CalPERS on April 7, 2016, regarding his service credit balance. On April 15, 2016, CalPERS provided Respondent with a service credit breakdown letter.

Respondent met with Respondent DSH – Metropolitan on January 8, 2017, for a second interactive process meeting. During the second meeting, Respondent was given a Disability Retirement Handbook.

On January 12, 2018, CalPERS informed Respondent that it approved his application for disability retirement effective July 1, 2017, but that his request for an earlier effective retirement date was being denied because he did not meet the criteria under Government Code section 20160 to allow for the correction of a mistake.

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 August 2, 2018. Respondent represented himself at the hearing. Respondent DSH - Metropolitan did not appear at the hearing.
Respondent testified on his own behalf. He testified that while he did meet with Respondent DSH – Metropolitan in April 2016, he did not believe the meeting adequately apprised him of his option to pursue IDR.

After considering all of the evidence introduced as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that the weight of the evidence indicates that Respondent had notice of his option to pursue IDR by April 7, 2016. Respondent's application was filed over one year after he had notice that he might pursue IDR. As a result, the ALJ concluded that whatever error or omission occurred, it could not be corrected by CalPERS under Government Code section 20160.

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 November 15, 2018 meeting was well reasoned and based on the credible evidence presented at the hearing.

December 19, 2018

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AUSTA WAKILY
Senior Attorney