ATTACHMENT B

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

Susan L. Chase (Respondent) was employed by Respondent California Department of Parks and Recreation (Department) as a Park Ranger. By virtue of her employment, Respondent was a state safety member of CalPERS. On September 26, 2010, Respondent submitted an application for service retirement, with an effective date of December 31, 2010. Respondent received her first service retirement warrant on February 1, 2011, and has been receiving her service retirement benefits since that date.

On March 1, 2011, Respondent submitted a Disability Retirement Election Application, seeking industrial disability retirement (IDR) (1st Application). The stated basis for her claimed disability was Lyme disease and Respondent stated that her disability began on January 14, 2008.

Before CalPERS could act on Respondent’s 1st Application for IDR, in a letter dated May 24, 2011, Respondent withdrew her application for IDR. CalPERS acknowledged Respondent’s letter and request, and in a letter dated June 3, 2011, advised Respondent that her 1st Application for IDR had been cancelled.

Over six years later, on February 26, 2018, Respondent submitted a 2nd Application for IDR, again identifying the basis for her claimed disability to be Lyme disease and the date of disability as January 14, 2008. CalPERS requested that Respondent provide copies of medical records demonstrating a continuous disability from December 2010 (the date of her service retirement) to February 2018. Respondent did not provide copies of the requested medical records. On June 15, 2018, CalPERS cancelled Respondent’s 2nd Application for IDR.

On July 9, 2018, Respondent submitted her 3rd Application for IDR, again identifying Lyme disease as the basis for the claimed disability and the date of January 14, 2008, as the date the disability began. CalPERS reviewed Respondent’s file and determined that there was no correctable mistake made by Respondent that would allow CalPERS to change Respondent’s retirement status from service retired to IDR. A letter dated October 3, 2018, was sent to Respondent, explaining the reasons for the CalPERS determination and giving Respondent appeal rights.

Respondent appealed CalPERS’ determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on April 15, 2019. Respondent represented herself at hearing. Respondent Department 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.
Documentary evidence and the testimony from a CalPERS witness established that, before she service retired, on two occasions (November 18, 2010 & December 15, 2010), Respondent spoke with a CalPERS team member regarding disability retirement and was provided with the CalPERS disability retirement brochure and application form.

In her May 24, 2011, letter to CalPERS, Respondent stated, in relevant part, “I am withdrawing my Disability Retirement application.” Respondent did not dispute the evidence regarding her communications with a CalPERS team member. Additionally, Respondent admitted that, at the time that she retired, 2010 – 2011, she believed that, because of ongoing symptoms from Lyme disease, she was not capable of performing her usual and customary duties as a Park Ranger. Respondent also admitted that, in 2011, she had spoken with another Park Ranger who had been approved for IDR and that she knew that applying for IDR was an option available to her. That is what prompted Respondent to submit her 1st Application for IDR.

Respondent did not have an explanation, other than she was depressed, for why she waited for over six years before contacting CalPERS again regarding the possibility of changing from service retirement to IDR.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ concluded as follows:

[Respondent] failed to prove by a preponderance of the evidence that her cancellation of her IDR application on May 24, 2011, was due to mistake, inadvertence, surprise or excusable neglect. This conclusion is reached for this reason: In 2011 [Respondent] believed she was unable to perform her job duties due to Lyme disease. Indeed, on March 1, 2011, after she service retired, she applied for IDR. Nonetheless, she cancelled this application in the hope that she could obtain part-time work with the Department, which she was not able to obtain. Because she believed she could not work in 2011, the fact that her symptoms from this condition have unfortunately worsened since that time is not a basis to find that her decision to cancel her IDR application on May 24, 2011, was due to mistake, inadvertence, surprise or excusable neglect under Section 20160.

The ALJ denied Respondent’s appeal and affirmed staff’s determination.

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

June 19, 2019

RORY J. COFFEY
Senior Attorney