ATTACHMENT B

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

Paul A. Bellamy (Respondent) was employed by Respondent California Rehabilitation Center, California Department of Corrections and Rehabilitation (Respondent CDCR), as a Correctional Officer. By virtue of his employment, Respondent was a state safety member of CalPERS. Respondent submitted an application for service retirement pending industrial disability retirement on April 7, 2015, and received an effective date of service retirement of September 1, 2015. CalPERS’ reviewed Respondent’s request for industrial disability retirement. CalPERS informed Respondent that he was not eligible for industrial disability retirement because his physician had determined that he was only temporarily disabled. Respondent did not respond to letters from CalPERS offering an opportunity for him to provide additional medical records. CalPERS notified him that his application was canceled due to insufficient information. Respondent called and spoke with CalPERS about that dismissal and was advised to file a new industrial disability retirement application. CalPERS mailed Respondent the CalPERS publication no. 35, the “Guide to Completing the Disability Retirement Application.”

Respondent filed a new application for disability retirement on December 6, 2016. CalPERS informed him that, pursuant to statutes, he could no longer file to change his retirement (he had been receiving a service retirement for over a year). CalPERS reviewed any possible claim for a correctable mistake under Government Code section 20160, which authorizes CalPERS to correct errors or omissions of retirees under certain conditions. No correctable mistake was found, and the 2016 application was rejected.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. A hearing was held on May 1, 2018. Respondent represented himself 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 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.

Respondent testified at the hearing, describing his employment and retirement while he pursued a workers’ compensation claim. He testified that he received the publication which told him not to wait to file his disability application until after his workers’ compensation matter resolved, but he did so anyway. He knew how to contact CalPERS and had done so previously. He testified that he wanted to make sure that his wife, whom he married shortly before he retired, would receive better benefits after his demise from disability retirement rather than on service retirement.
CalPERS presented a CalPERS staff witness who testified about CalPERS' letters contacting Respondent repeatedly at the time of the first application for disability retirement in order to give him more time to provide medical records that substantiated his claim of disability. CalPERS also informed him after the first industrial disability retirement application was dismissed that he had to reapply immediately to be considered for industrial disability retirement.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that Respondent failed to demonstrate that his failure to timely refile his application was the result of mistake, inadvertence, surprise, or excusable neglect as required by Government Code section 20160.

In the Proposed Decision, the ALJ concludes that Respondent is not eligible to change from service retirement to a disability retirement. The Proposed Decision was issued on May 30, 2018. On August 15, 2018 the Board voted to remand the matter to the ALJ to “receive and consider additional evidence in light of the current language” of Government Code section 21252, subdivision (a). The proposed decision had cited that statute as it read before in 2009, instead of the current statutory language.

On remand, the court set a hearing date of May 1, 2019. CDCR did not appear. Respondent and his counsel did not appear, but instead submitted a written brief. CalPERS argued that the current language of Government Code section 21252 did not affect the determination in this matter. The ALJ agreed and issued a Proposed Decision that addressed the issues of Government Code section 20160. The ALJ determined that the change in 2009 to the language currently in Government Code section 21252 did not affect or apply to the facts in this determination, and that Respondent was not entitled to retroactively change his retirement status for all the reasons cited in the previous proposed decision.

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

August 21, 2019

CYNTHIA RODRIGUEZ
Senior Attorney