ATTACHMENT B

STAFF'S ARGUMENT

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STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Mongi B. Yacoubi (Respondent) was employed as a Correctional Supervising Cook by Respondent San Quentin State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of his employment, Respondent was a state safety member of CalPERS, and has the minimum service credit necessary to qualify for service retirement, and to apply for disability retirement.

Respondent applied for Industrial Disability Retirement (IDR) with CalPERS in September 2018. For two years prior, Respondent had contacted CalPERS on various occasions to discuss applying for disability retirement but did not actually apply until September of 2018. When CalPERS approved his IDR application, Respondent requested an earlier effective retirement date going back to his last day on active pay status in May 2017. CalPERS denied his request, on grounds that the Public Employees' Retirement Law (PERL, Gov. Code 20000 et. seq.) mandated that his IDR benefits commence effective September 1, 2018. CalPERS also determined that Respondent's failure to apply sooner for IDR benefits was not the result of a mistake that CalPERS could correct, pursuant to California Government Code section 20160, and thus could not grant his request for an earlier effective date of retirement.

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 November 04, 2019. Neither Respondent nor Respondent CDCR appeared 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.

At the hearing, CalPERS' staff testified and explained that Government Code section 21252 determines the effective date of a member's retirement. If a member applies for retirement within nine months of the member's discontinuance of state service, the application shall be deemed to have been submitted, and if approved, become effective, on the day after the last day on which salary was payable to the member. If the member applies more than nine months after his or her discontinuance of state service, the retirement date becomes effective the first day of the month in which the member applied. CalPERS interprets the PERL to consider state service to be "discontinued" when a person is no longer on active pay status with a state agency or public agency.

At the hearing, CalPERS staff explained that Respondent's last day on active pay status with Respondent CDCR was May 31, 2017, and that Respondent applied for IDR on September 4, 2018. Because those dates are more than nine months apart, CalPERS determined that section 21252 required Respondent's IDR benefits become effective September 1, 2018, the first day of the month that he applied for IDR. Staff also testified regarding Government Code section 20160, which provides for the correction of errors or omissions made by a member as a result of a mistake, inadvertence, surprise, or excusable neglect.

CalPERS staff testified at the hearing that she reviewed records of Respondent's communications with CalPERS during the period from 2016 to 2018 to determine whether Respondent made an error or misunderstood the requirements and timing for applying for IDR. The analyst testified that during June 2016, March 2017, March 2018, and April 2018, Respondent spoke with CalPERS representatives to discuss disability and service retirement benefits, eligibility, and estimated benefit amounts. Because the record of contacts between CalPERS and Respondent showed he was aware of and familiar with his ability to apply for IDR prior to his last day on pay, and there was no evidence of a mistake, CalPERS denied his request for an earlier effective retirement date.

Respondent did not appear at hearing and thus did not testify or submit any evidence.

After considering the evidence and testimony offered by CalPERS, the ALJ found that Respondent failed to demonstrate that he is entitled to relief under Government Code section 20160. The ALJ ruled that Respondent presented no evidence and therefore failed to meet his burden of proof. For these reasons, the ALJ concluded that Respondent's appeal should be denied.

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

February 19, 2020

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Kevin Kreutz
Senior Attorney