

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

David L. Just (Respondent) was a Correctional Officer for the California State Prison Sacramento, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of his employment, Respondent was a state safety member.

On September 5, 2018, CalPERS received Respondent's application for service retirement. On that date, CalPERS acknowledged receipt of his service retirement application, and advised Respondent, "[y]ou may be entitled to receive disability retirement if you are unable to work because of an illness or injury. To request a service pending disability retirement, you must complete a Disability Retirement Election Application." Respondent retired for service effective December 20, 2018, and has been receiving a monthly service retirement allowance since that date.

On January 2, 2020, Respondent contacted CalPERS to inquire about changing his service retirement to disability retirement. He explained that after he retired for service in December 2018, he was diagnosed with a cardiovascular condition, which he thought existed prior to his service retirement. A CalPERS analyst answered his questions and advised him of the disability retirement process. The analyst entered extensive notes of the conversation into the CalPERS customer touch point notes, which were received in evidence at hearing. Once entered into the CalPERS database, the notes cannot be deleted or altered in any way.

Also on January 2, 2020, CalPERS sent Respondent a copy of "A Guide to Completing Your CalPERS Disability Retirement Application" (PUB-35). PUB-35 sets forth the eligibility requirements for disability retirement, the deadlines to apply, blank copies of necessary forms, and detailed instructions on how to apply.

On June 12, 2023, Respondent called CalPERS to request an in-person appointment to change his service retirement to a disability retirement. The next day, Respondent met with a CalPERS representative for advice and was provided the necessary forms to request a change in his retirement. On June 26, 2023, CalPERS received Respondent's Industrial Disability Retirement (IDR) application based on a cardiovascular condition.

On August 23, 2023, CalPERS sent letters to both Respondent and Respondent CDCR requesting additional information pertaining to Respondent's claimed disability to determine if a correctable mistake was made. Respondent CDCR did not respond to the request. On September 11, 2023, CalPERS received Respondent's response, stating that he did not apply for IDR prior because he was diagnosed with his cardiovascular condition after he had service retired.

After a review of the documents and information, and after considering Government Code section 20160, CalPERS determined that Respondent's application was filed late,

and he hadn't made a correctable mistake that would allow CalPERS to change his service retirement to a disability retirement. On November 16, 2023, CalPERS sent a letter to Respondent informing him of CalPERS' determination.

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 13, 2024. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing and a default was taken as to Respondent CDCR only.

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, answered Respondent's questions, and clarified how to obtain further information on the process.

At the hearing, CalPERS presented evidence regarding Respondent's late application, and whether he made a correctable mistake. CalPERS' evidence demonstrated that Respondent had full knowledge of the IDR application process, including the timeline to apply for disability retirement. Respondent was informed of the opportunity to apply for IDR as early as September 5, 2018, when he received CalPERS' first payment acknowledgement letter. Respondent also engaged in a disability retirement counseling session with CalPERS' staff and received the PUB-35, which advised Respondent in writing not to wait to apply for disability if he felt he was disabled.

Respondent testified on his own behalf that he first became aware of IDR and to apply for it when he met with a CalPERS representative. Respondent had filed a workers' compensation claim in 2023, and believed that if he had filed for disability sooner he would have committed fraud. Respondent admitted that he did not retire due to any health condition. He testified that although he suffered a heart attack before he service retired, he first believed he was disabled on October 12, 2023, when he was examined by a Qualified Medical Examiner in regard to his workers' compensation claim. Respondent did not call any witnesses to testify on his behalf at the hearing.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that the application was untimely because Respondent did not file his application while still in state service, within four months after discontinuance of state service, or while on military leave, as required by Government Code section 21154. The ALJ found that Government Code section 21154, subdivision (d) did not apply because Respondent ceased being a member when he service retired. The ALJ further found that Respondent did not make a correctable mistake under Government Code section 20160. Respondent had suffered a heart attack before retiring in December 2018 and was informed of his ability to apply for IDR at the time he retired for service. Despite being informed of his ability to apply for disability retirement again in 2020, Respondent waited four and a half years after his service retirement to submit his IDR application. Accordingly, The ALJ concluded that

Respondent failed to establish his failure to timely file the IDR application constituted a correctable error or omission under Government Code section 20160.

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

November 20, 2024

Bryan Delgado
Attorney