

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION, AS MODIFIED**

Jonathan W. Bates (Respondent) was an Athletic Equipment Attendant for Rowland Unified School District (Respondent District). By virtue of his employment, Respondent was a local miscellaneous member of CalPERS. Respondent's last day on payroll with Respondent District was December 22, 2011.

On January 27, 2017, Respondent called CalPERS and spoke with a representative requesting information regarding disability retirement (DR). That same day, CalPERS mailed Respondent a copy of CalPERS Publication 35, "A Guide to Completing Your CalPERS Disability Retirement Application" (PUB 35). PUB 35 provides extensive details regarding the process to file an application for disability retirement, what should be provided with the application, and cites all applicable law. Notably, PUB 35 informed Respondent that if his application is received by CalPERS after nine months from his last day on payroll, then his retirement date can be no earlier than the first of the month in which CalPERS receives his application.

On May 25, 2021, Respondent inquired about filing for disability retirement. A CalPERS representative spoke with Respondent to answer any DR related questions. On the same date, CalPERS mailed Respondent an additional copy of the PUB 35.

On July 13, 2022, Respondent again requested information concerning DR. A CalPERS representative answered Respondent's questions regarding DR; during that conversation, Respondent was specifically informed that since his separation date was more than nine months prior, the effective date of his disability retirement could be no sooner than the first day in the month that CalPERS receives his DR application. On the same date, CalPERS mailed Respondent a third copy of the PUB 35.

On May 3, 2023, Respondent attended an in-person appointment at CalPERS' San Bernardino Regional Office. At the appointment, a CalPERS representative explained how DR benefits are calculated, the differences between survivor and lifetime beneficiaries, and the differences between his retirement options. The CalPERS representative also advised Respondent on the timeframes for submission of documents, the required documents needed to support a DR application, and CalPERS' timeline for review. Respondent submitted a "Retirement Allowance Estimate Request" at the in-person appointment.

On July 25, 2023, Respondent submitted a DR application at a second in-person appointment at CalPERS' San Bernardino Regional Office. Respondent requested an effective retirement date of "EOB[.]" which means at expiration of benefits. At the hearing, a CalPERS employee would testify that the date of expiration of benefits for Respondent was his last day on payroll status, December 22, 2011. On the same date, Respondent submitted a "Report of Separation and Advance Payroll Information," completed by the Respondent District showing that Respondent's last day on payroll was December 22, 2011.

CalPERS sought information to determine whether Respondent was entitled to a retirement date earlier than the first day of the month that CalPERS received his application. On August 3, 2023, CalPERS sent a questionnaire to Respondent District and Respondent to determine whether Respondent's failure to file a DR application within nine months of his separation was the result of mistake, inadvertence, surprise, or excusable neglect. Respondent responded that he was aware he could file a DR application in 2017. Respondent District did not respond to the questionnaire.

On December 4, 2023, CalPERS informed Respondent that his application for DR was approved. The effective date of Respondent's retirement would be July 1, 2023, the first day of the month that CalPERS received his application. CalPERS determined that Respondent did not qualify for an earlier disability retirement date at expiration of benefits because he was aware that he could file for disability retirement on January 27, 2017, but did not submit his application until July 25, 2023, which was well beyond six months of being placed on notice to seek correction and file. Accordingly, CalPERS determined that Respondent did not make a correctable mistake when he submitted his disability retirement application.

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 February 19, 2025. Neither Respondent nor the Respondent District appeared at the hearing, despite being properly noticed. Accordingly, the hearing proceeded as a default against Respondent and the Respondent District under Government Code section 11520, subdivision (a).

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 demonstrating that Respondent was informed numerous times about deadlines for submitting his DR application. A CalPERS analyst testified that Respondent's DR application, which was admitted into evidence, was received on July 25, 2023, more than nine months from the date of expiration of benefits on December 22, 2011.

Evidence at the hearing also demonstrated that Respondent's failure to file his DR application within nine months of separation from his employment with the Respondent District was not a correctable mistake. Under Government Code section 20160, subdivision (a)(1), an error cannot be corrected by CalPERS if a party seeks correction more than six months after discovery of the error or mistake. The evidence at hearing showed that Respondent spoke with a CalPERS representative on January 27, 2017, and was aware of the timelines to submit a DR application. The PUB 35 mailed to Respondent informed him that if his application is received by CalPERS after nine months from his last day on payroll, then his retirement date can be no earlier than the first day of the month in which CalPERS receives his application. There was no

evidence presented at the hearing that Respondent sought correction within six months from January 27, 2017. Instead, the evidence showed that Respondent waited six years before submitting his DR application on July 25, 2023.

After considering all the evidence introduced and CalPERS' argument, the ALJ denied Respondent's appeal. The ALJ found that Respondent did not meet his burden to show that his failure to file his DR application within nine months of separation from his employment with the Respondent District was a correctable mistake. The ALJ reasoned that under Government Code section 20160, subdivision (a)(1), CalPERS may not correct a mistake when the request comes more than six months after discovery of the mistake. The ALJ found that the evidence showed that Respondent was placed on notice on January 27, 2017, to apply and seek correction regarding the effective date of his retirement. Yet Respondent failed to do so within six months and waited even after receiving additional copies of the PUB 35 in 2021 and 2022 until finally applying in 2023. There was no evidence presented at the hearing that Respondent's failure to timely file was the result of mistake, inadvertence, surprise, or excusable neglect as required by Government Code section 20160. Accordingly, the ALJ concluded that CalPERS correctly determined respondent's effective retirement date to be July 1, 2023, and denied Respondent's appeal.

Pursuant to Government Code section 11517, subdivision (c)(2)(C), the Board is authorized to "make technical or other minor changes in the proposed decision." To avoid ambiguity, staff recommends the following changes: "industrial" be removed on page 4, paragraph 4, line 6; "administration" be replaced with "control" on page 9, paragraph 1; "21060, subd. (a)" be changed to "20160, subd. (a)(1)" on page 17, paragraph 12; and "21060" be changed to "20160" on page 18, paragraph 2.

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

April 15, 2025

---

Bryan Delgado  
Attorney