

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Rosemary Sanchez Hernandez (Respondent) was employed as a Correctional Officer by Respondent Ironwood State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of her employment, Respondent was a state safety member of CalPERS subject to Government Code section 21154.

On March 28, 2022, Respondent applied for service retirement through myCalPERS Member Self Service (MSS), with a retirement date of March 28, 2022. Respondent retired for service effective March 28, 2022, and has been on the service retirement roll since that date.

On January 26, 2023, Respondent visited the San Bernardino Regional Office (SBRO) and submitted an application for industrial disability retirement with a retirement date of March 28, 2022. In filling out the application, disability was claimed based on orthopedic conditions.

On February 22, 2023, to determine if a correctable mistake was made, CalPERS requested additional information and documents from both Respondent and Respondent CDCR regarding Respondent's request to change from service retirement to industrial disability retirement.

After reviewing the information on file and information received from Respondent and Respondent CDCR, and considering Government Code section 20160 and other applicable precedents, CalPERS determined that Respondent's member status ceased on March 28, 2022, (Gov. Code § 20340); Respondent had knowledge of the application process but did not timely submit her application for industrial disability retirement (Gov. Code § 21152); and she did not meet the criteria under Government Code section 20160 that allows the correction of a mistake.

CalPERS determined that Respondent knew or should have known about the process for submitting an application for industrial disability retirement on March 28, 2022. CalPERS sent Respondent a letter, informing her to apply for industrial disability retirement if she believes she is disabled; Respondent received disability retirement counseling on multiple occasions from July 12, 2022, through December 7, 2022; and Respondent was sent a publication regarding disability retirement. Nonetheless, Respondent waited for over 10 months to apply for industrial disability retirement on January 26, 2023. There was no error or omission as a result of mistake, inadvertence, surprise, or excusable neglect. Consequently, CalPERS determined that it could not accept Respondent's late application for industrial disability retirement.

On July 27, 2023, Respondent was notified of CalPERS' determination and advised of her 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 June 30, 2025. Respondent represented herself at the hearing. Respondent CDCR was represented by an Employment Relations Officer at the hearing.

Prior to the hearing, CalPERS explained the hearing process to the Respondent and the need to support her 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.

Respondent testified on her own behalf. Respondent testified that her employer never informed her about a disability retirement. Respondent claimed that her union representative advised her that the warden recommended she retire because of the 2021 under the influence investigation, which was later dropped to a reckless driving charge. Respondent also testified that she did not receive any information from CalPERS notifying her of her right to file for industrial disability retirement because she moved twice after filing her service retirement application.

Respondent CDCR representatives testified that in March 2022, Respondent resolved an adverse action, which resulted in a five percent reduction in pay. Subsequently, Respondent CDCR Internal Affairs commenced an investigation relating to another disciplinary action against Respondent due to allegations of driving under the influence. In March 2022, CDCR notified Respondent that she would be interviewed as part of the investigation. Also in March 2022, Respondent notified Respondent CDCR of her intent to service retire but at no point did Respondent notify CDCR about any alleged disability or incapacity to perform her job duties; thereafter, the disciplinary action was halted by Respondent CDCR because Respondent separated from employment by way of service retirement. Therefore, rather than proceeding with the discipline, in May 2022, Respondent CDCR issued a letter notifying Respondent that she had separated from employment "under unfavorable" circumstances because of her service retirement.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent "did not prove that her failure to file her disability retirement application in a timely manner was the result of mistake, inadvertence, surprise, or excusable neglect." CalPERS informed Respondent about industrial disability retirement multiple times; despite being provided with this information, Respondent failed to file a timely application.

The ALJ concluded that CalPERS acted properly in cancelling the late application and is barred from accepting it under Government Code sections 20340 and 20160.

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

September 17, 2025

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Preet Kaur  
Senior Attorney