

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO DECLINE TO ADOPT THE PROPOSED DECISION AND REMAND TO THE OFFICE OF THE ADMINISTRATIVE HEARINGS

Celina S. Bernard (Respondent) was employed by the County of Riverside (County) as a Social Services Practitioner III. By virtue of her employment, she was a local miscellaneous member of CalPERS subject to Government Code section 21151.

Respondent separated from her employment with the County in March 2022. Before she was separated, the County applied for disability retirement on her behalf.

CalPERS informed Respondent of the employer-originated application for disability retirement and explained that she needed to complete her own application and provide it to CalPERS with supporting documents. Respondent did not respond to CalPERS' requests, resulting in the cancellation of the March 2022 employer-originated application for disability retirement.

Approximately one year later, in May 2023, Respondent submitted an application for disability retirement. Respondent provided a Physician's Report on Disability Form, which was based on a physical examination that occurred in March 2022. CalPERS sent letters to Respondent requesting documents supporting her application for disability retirement. CalPERS cancelled Respondent's application on October 11, 2023, after she failed to provide the requested documents.

On February 15, 2024, Respondent applied for disability retirement based on her orthopedic (avascular necrosis in hips, bilateral total hip replacement, herniated discs, and broken left ankle) and internal (severe deep tissue damage from overprescribed steroids for over a seven-year period) conditions. Because Respondent separated from employment in March 2022, she was required to show that she was continuously disabled from the date of discontinuance of service to the time of her disability retirement application, pursuant to Government Code section 21154.

CalPERS mailed Respondent a letter requesting additional information relating to her application for disability retirement. On May 13, 2024, CalPERS received a Physician's Report on Disability Form from Amjah Al-Khawaldeh, M.D., signed on April 26, 2024, indicating that Respondent's incapacity was not permanent and would not last longer than 12 months.

In May 2024, Respondent completed a CalPERS questionnaire. In response to the question as to why she waited until February 15, 2024, to apply for disability retirement if her last day on pay was March 9, 2022, she responded:

"I was living off of the inheritance of my grandparents [sic] estate, which me, my siblings, and all of our immediate cousins received, as a result of our entire passing of our paternal grandparents and fathers."

On June 12, 2024, CalPERS sent Respondent a letter advising her that her disability retirement application had been denied because she did not meet the eligibility requirements under Government Code section 20026. The letter confirmed that CalPERS received a new Physician's Report on Disability from Dr. Al-Khawaldeh, dated April 26, 2024, stating that the duration of her condition was less than 12 months. Per Government Code section 20026, her disabling condition must be expected to last at least 12 consecutive months, and therefore, her application for disability retirement was denied.

To be eligible for disability retirement, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the basis of the claimed disability must be permanent or of an extended duration which is expected to last at least 12 consecutive months or will result in death.

CalPERS issued a letter amending its determination on February 20, 2025. The letter stated an additional basis for denial was that her application was untimely under Government Code section 21154. CalPERS reviewed information relating to her application for disability retirement and determined that her failure to submit a timely application was not the result of a "correctable mistake" pursuant to Government Code section 20160.

Respondent appealed this 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 10, 2025. Respondent represented herself at the hearing. The County did not appear at the hearing and a default was taken as to the County only.

Prior to the hearing, CalPERS explained the hearing process to 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.

At the hearing, the Statement of Issues (SOI) was amended to reflect that the issues on appeal were limited to the following: (1) Whether Respondent's application for disability retirement is timely submitted pursuant to Government Code section 21154; and (2) If Respondent's application for disability retirement is timely filed, whether she is substantially incapacitated from the performance of her duties as a Social Services Practitioner III for the County based on her orthopedic (avascular necrosis in hips, bilateral total hip replacement, herniated discs, and broken left ankle) and internal (severe deep tissue damage from overprescribed steroids for over a seven-year period) conditions.

Although the ALJ granted CalPERS motion to amend the SOI, which was included in a footnote, the Proposed Decision decides the issue on "[w]hether Respondent's application for disability retirement was timely submitted pursuant to Government Code section 21154 or *otherwise excused from compliance with section 21154 due to a "correctable mistake" pursuant to Government Code section 20160.*" Given that this is not the issue that was before the ALJ, this matter should be remanded so that the ALJ may issue a decision based on the amended SOI.

Pursuant to the amended SOI, the Government Code sections relevant to the determination are sections 21154 and 20026. Therefore, this matter should be remanded for the taking of further evidence on whether Respondent's disability retirement application dated February 15, 2024, is timely under Government Code section 21154 and, if so, whether she is substantially incapacitated pursuant to Government Code section 20026.

For all the above reasons, staff argues that the Board of Administration should decline to adopt the Proposed Decision and remand the matter back to the Office of Administrative Hearings for the taking of further evidence.

September 17, 2025

Austa Wakily
Senior Attorney