

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Steven Monday (Respondent) was employed as a Fire Engineer by the City of South Lake Tahoe (Respondent City). By virtue of his employment, Respondent was a local miscellaneous member of CalPERS. Respondent's last day on payroll with Respondent District was December 31, 2022.

In that same month, CalPERS provided Respondent with a copy of the Publication 35 – Disability Retirement Election Application (PUB-35). The PUB-35 is a CalPERS publication distributed to members that sets forth the eligibility requirements for industrial disability retirement (IDR), the deadlines to apply, blank copies of necessary forms, and detailed instructions on how to apply. The PUB-35 identifies that the effective date of an IDR can be no earlier than a member's last day on payroll if the application is received by CalPERS within nine months of that date. If an IDR application is received nine months past the last day on payroll, then the effective date of retirement can be no earlier than the first day of the month that CalPERS receives the application.

In addition to PUB-35, Respondent attended personal counseling appointments at CalPERS San Diego Regional Office (SDRO) on December 9, 2022, and December 14, 2022, at which he was advised on how to apply for IDR. At both appointments, a CalPERS representative reviewed the IDR process with Respondent and the timeframe to submit medical documentation in support of his application. Respondent attended additional personal counseling appointments on March 28, 2023 and April 18, 2023 at SDRO. Since Respondent was a local miscellaneous member of CalPERS, Respondent was advised that the medical determination of his disability would be made by Respondent City and not CalPERS.

On January 4, 2024, Respondent submitted to CalPERS an application for Service Pending Industrial Disability Retirement (SPIDR) application. Respondent's application sought an effective retirement date of December 31, 2022, which was Respondent's last day on payroll with Respondent City. To obtain the effective date sought by Respondent, he was required to submit his application by September 30, 2023.

Respondent's SPIDR application was approved. But, because Respondent's SPIDR application was received beyond nine months of Respondent's last day of payroll, CalPERS sent questionnaires to Respondent City and Respondent to determine if the delay in receiving the SPIDR application was a correctable mistake pursuant to Government Code section 20160. Based on the responses and facts presented at that time, there was no evidence supporting that a correctable mistake was made.

On June 4, 2024, CalPERS denied Respondent's request for an earlier effective retirement date of December 31, 2022. CalPERS identified that Respondent had several personal counseling appointments that explained the IDR application process and the requirement to submit an application within nine months of his last day on payroll to obtain the effective retirement date Respondent sought.

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 June 16, 2025. Respondent represented himself at the hearing. Respondent City was represented by counsel.

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 related to the advisements provided to Respondent during the IDR application process and the testimony of a CalPERS analyst to explain CalPERS' determination. The analyst testified as to the specific page within the PUB-35 that advised of the requirement to submit an IDR application within nine months to receive the effective retirement date that Respondent sought. The analyst acknowledged that the language in the general IDR application forms, which states that CalPERS makes a medical determination underlying an IDR application, could cause confusion to local miscellaneous members because the determination for local members is made by their employer rather than CalPERS. She also acknowledged that local miscellaneous members can sometimes be confused about whether to send their medical records to their employer or CalPERS. But the analyst also testified that there was no evidence to establish that Respondent incorrectly sent medical records to CalPERS, thereby causing any delay for his SPIDR application.

A Human Resources Manager for Respondent City testified at the hearing that she processed the IDR component of Respondent's SPIDR application with Respondent City. She testified that during the period of Respondent's application, to her knowledge, CalPERS began requiring some of the medical documentation underlying an IDR application to be sent to CalPERS. From her perspective, this had caused her confusion, and she claimed that she received mixed advice from CalPERS representatives through correspondence. The manager also testified that she was under the impression that Respondent had timely applied with CalPERS based on his representation to her that he had, but she did not confirm with CalPERS or request a copy of his submitted application.

Respondent testified at the hearing that the reason for submitting his application (only three months) late was because he was awaiting receipt of additional medical reports and evaluations completed through Respondent City. Consistent with some of the information contained within the PUB-35, his understanding was that if he had submitted his application it would have been cancelled within twenty-one days if all his

accompanying medical documentation had not been submitted. Respondent also testified that, during the relevant period, he struggled with physical and mental health conditions, which were evident throughout his testimony and appearance at hearing, as well as supported by the medical records underlying the appeal.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent's appeal. The ALJ found that Respondent's physical and mental conditions as presented at the hearing rendered him incapacitated and that excused any neglect in failing to timely file his SPIDR application. The ALJ also reasoned that testimony from the other witnesses about changes made to the IDR application process, including where medical records should be sent, corroborated the general confusion that Respondent had during the relevant period. Based on the evidence presented, Respondent had met his burden of establishing that he made a correctable mistake under Government Code section 20160. Accordingly, the ALJ concluded that the effective date of his retirement shall be corrected to December 31, 2022, his last day on payroll with Respondent City.

Based on new information and evidence that was presented at the hearing, staff argues that the Proposed Decision should be adopted by the Board.

September 17, 2025

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Bryan Delgado  
Senior Attorney