

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Bernice V. Garza (Respondent) was employed as a Correctional Sergeant for Substance Abuse Treatment Facility, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of her employment, Respondent was a state safety member.

On August 28, 2018, Respondent attended a personal counseling appointment at the CalPERS Fresno Regional Office (FRO). At the appointment, a CalPERS representative explained the Industrial Disability Retirement (IDR) application process with Respondent and the timeframe to submit medical documentation in support of her application.

Respondent attended additional personal counseling appointments on December 28, 2018, and February 6, 2020. During the December 28, 2018, appointment, Respondent was provided a copy of 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 IDR, the deadlines to apply, blank copies of necessary forms, and detailed instructions on how to apply. As applicable to Respondent, the PUB-35 specifically advises that an IDR application must be submitted to CalPERS within four months of discontinuance of state service, and that members should not wait for any workers' compensation matters to conclude before applying for IDR. The PUB-35 also has a detailed explanation regarding an application for service pending IDR, which allows a member to service retire and later convert to an IDR if they are determined by CalPERS to be disabled.

On June 29, 2021, Respondent called a CalPERS representative to have additional questions answered about the IDR application process. Respondent expressed to the representative that she wanted to apply for service retirement and later apply for IDR, after her workers' compensation matters were concluded. Given that an IDR application later could be untimely, the CalPERS representative advised her to submit an IDR application and explained to her the option of an application for service pending IDR. Despite this advisement, Respondent responded that she still wanted to wait for her workers' compensation matter to resolve before applying for IDR.

On that same date, Respondent submitted to CalPERS an application for service retirement with a requested retirement date of July 30, 2021. Respondent has been receiving service retirement benefits since that date.

On June 6, 2022, Respondent submitted an IDR application. Because Respondent's first IDR application was received beyond four months of her discontinuance of state service—July 30, 2021—CalPERS sent questionnaires to Respondent CDCR and Respondent to determine if the delay in receiving the IDR 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. As a result, on August 30, 2022, Respondent's first IDR application was cancelled.

On March 5, 2024, Respondent submitted a second IDR application, with a requested retirement date of July 29, 2021. On May 28, 2024, CalPERS denied Respondent's second IDR application that sought to change her service retirement to an IDR. CalPERS determined that Respondent disregarded the advice it provided to her about the timely filing of an IDR application, and that Respondent had received several personal counseling appointments and copies of the PUB-35 informing her of the deadline to apply.

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 August 20, 2025. Despite both Respondent and Respondent CDCR receiving timely and proper notice of the hearing, both failed to appear at the hearing. A default was taken as to both Respondent and Respondent CDCR pursuant to Government Code section 11520.

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, 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 Respondent to submit an IDR application within four months of her discontinuance of state service for her application to be timely. The analyst also authenticated records showing each of the personal counseling appointments that Respondent attended on August 28, 2018, December 28, 2018, February 6, 2020, and a June 29, 2021, phone call between Respondent and a CalPERS representative. The analyst also confirmed that Respondent was placed on service retirement as of July 30, 2021, and both of her IDR applications were received beyond four months of that date.

After considering all the evidence introduced, as well as argument by CalPERS, the ALJ denied Respondent's appeal. The ALJ found the evidence established that Respondent's second IDR application was untimely, and that Respondent failed to meet her burden of proof to show that the error was the result of a correctable mistake under Government Code section 20160. The ALJ reasoned that after all the evidence was considered, coupled with Respondent's failure to appear at the hearing and present evidence, the facts of the case did not support a finding of a correctable mistake. The ALJ concluded that CalPERS may not accept Respondent's late application for IDR and her request to change her service retirement to IDR must be denied.

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

November 19, 2025

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