

ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION ON REMAND, AS MODIFIED

Celina S. Bernard (Respondent) was last employed by the County of Riverside (County) as a Social Services Practitioner III. By virtue of this 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 separated, the County applied for disability retirement on her behalf.

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 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.

On June 28, 2022, CalPERS sent Respondent a letter informing her that she had been permanently separated from all CalPERS-covered employment. Respondent was given three options: receive a refund of her member contributions; retire with CalPERS; or leave her contributions on deposit.

Pursuant to Respondent's requests, on August 22, 2022, February 1, 2023, and April 26, 2023, CalPERS sent Respondent Publication 35 - Disability Retirement Election Application (PUB 35). PUB 35 includes the following relevant information:

You should apply for disability or industrial disability retirement as soon as you believe you are unable to perform your usual job duties because of an illness or injury that is of permanent or extended duration and expected to last at least 12 consecutive months or will result in death. Once we receive all the required information described in this publication, we can begin processing your application.

[¶] . . . [¶]

CalPERS can cancel your application for any of the following reasons:

- If you fail to provide the information or forms needed to make a determination on your disability retirement; or
- If you fail or refuse to attend an Independent Medical Examination (IME) appointment when requested; or
- If you do not meet the eligibility requirements for disability or industrial disability retirement.

Approximately one year later, in May 2023, Respondent applied for disability retirement. She provided a report from her physician, but the form was incomplete and was not based on a current examination. CalPERS sent letters to Respondent requesting documents supporting her application for disability retirement on June 26, 2023, August 3, 2023, and August 29, 2023. The requested information was not received. 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 conditions (avascular necrosis in hips, bilateral total hip replacement, herniated discs, and broken left ankle) and internal conditions (severe deep tissue damage).

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.

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.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. An initial hearing was held on June 10, 2025.

At the hearing on June 10, 2025, 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 conditions (avascular necrosis in hips, bilateral total hip replacement, herniated discs, and broken left ankle) and internal conditions (severe deep tissue damage from overprescribed steroids for over a seven-year period).

A Proposed Decision denying Respondent's appeal was issued on July 14, 2025. The Proposed Decision did not consider the issues as amended.

On September 17, 2025, the CalPERS Board of Administration remanded the matter 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.

Prior to both hearings, 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.

The hearing on remand was held on January 5, 2026. Respondent represented herself at both hearings. The County did not appear at either hearing.

At the initial hearing, CalPERS presented testimony and introduced numerous documents in support of its determination.

At the initial hearing, Respondent testified about her disability and explained that she called the office where her physician worked to get an updated physician's form supporting her retirement disability, but he was not available for another year. Respondent testified that she spoke with a nurse practitioner in the same office, and he completed the second statement which contradicted her doctor's statement.

Respondent testified about the reasons she delayed filing her application for disability retirement, but she did not explain the lack of medical records substantiating her disability from March 2022 to the time of her application on February 15, 2024.

At the hearing on remand, the parties stipulated that the finding made in paragraph 18 of the Proposed Decision is inaccurate because Respondent did not service retire in March 2022.

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 meet her burden to prove by a preponderance of the evidence that she submitted her application for disability retirement in a timely manner. 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. The evidence showed that on March 21, 2022, the County applied for disability retirement on Respondent's behalf. Respondent was notified that she needed to submit her own application for disability retirement within four months and to provide CalPERS with supporting documents. (Govt. Code, § 21154). Respondent did not provide documents establishing her disability retirement application was timely pursuant to Government Code section 21154.

Given that Respondent's application was not timely filed, the ALJ concluded that there was no need to address the second issue, which is whether Respondent was substantially incapacitated from performing the usual and customary duties of her job at the time she filed her disability retirement election application. The ALJ noted, however, that there was no competent medical opinion to support Respondent's claim of disability.

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 that "January 26, 2023" on page 16 be changed to "February 15, 2024" in the Proposed Decision on Remand.

For all the above reasons, staff argues that the Board should adopt the Proposed Decision on Remand, as modified.

February 18, 2026

Austa Wakily
Senior Attorney