ATTACHMENT B

STAFF'S ARGUMENT

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

Raquel N. Green (Respondent) was employed by the California State Prison—Los Angeles County, California Department of Corrections and Rehabilitation (Respondent CDCR) as a Supervising Registered Nurse II. By virtue of her employment, Respondent is a state safety member of CalPERS.

On April 26, 2023, Respondent submitted a service retirement pending industrial disability retirement application (First SPIDR Application). By letter dated May 1, 2023, CalPERS notified Respondent that five categories of supporting documents, including a Workers' Compensation Carrier Request form, were required within 21 days or the application would be cancelled. Respondent completed and forwarded her portion of the Workers' Compensation Carrier Request form before her May 15, 2023 retirement date, but the form was not returned to CalPERS within the 21-day period. By letter dated May 30, 2023, CalPERS notified Respondent that the industrial disability retirement portion of her application had been cancelled.

On May 20, 2024, Respondent reapplied and CalPERS received a second service retirement pending industrial disability retirement application (Second SPIDR Application).

Applicable Law

Government Code section 21154 provides that an application for industrial disability retirement may be made only while the member is in state service; within four months after discontinuance of state service; during an approved leave of absence; or while the member is physically or mentally incapacitated to perform duties, from the date of discontinuance of service to the time of application. Respondent's Second SPIDR Application, received by CalPERS on May 20, 2024, was filed more than a year after her May 14, 2023 separation from state service—well beyond the four-month deadline.

Government Code section 20160, subdivision (a), states that the Board "may, in its discretion "correct a member's error or omission where (1) the request for correction is made within a reasonable time after discovery of the right to make the correction, "which in no case shall exceed six months," and where (2) the error or omission resulted from mistake, inadvertence, surprise, or excusable neglect. Government Code section 20160, subdivision (b), requires that "the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system," subject to the provisions of subdivisions (c) and (d). Government Code section 20160, subdivision (d), places on the party seeking correction the burden of establishing the right to correction under subdivisions (a) and (b).

CalPERS' Determination and Appeal

By letter dated August 21, 2024, CalPERS denied Respondent's Second SPIDR Application on two grounds: 1) the application was untimely under Government Code section 21154 as it was filed more than four months after Respondent's separation from state service; and 2) Respondent had not sought correction of the cancelled First SPIDR Application within six months as required to establish a correctable mistake under Government Code section 20160.

By letter dated September 23, 2024, Respondent timely 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 July 27, 2026. Respondent represented herself at the hearing. Respondent CDCR did not appear at the hearing and a default was taken as to Respondent CDCR 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, CalPERS presented testimony from an analyst in its Disability Retirement Section, who described the standard application process. The analyst testified that an application must be submitted within 120 days of separation, and that a member cannot switch from service to industrial disability retirement more than 30 days after receiving a first retirement warrant. The evidence established that, before she submitted her First SPIDR Application, CalPERS provided Respondent with *A Guide to Completing Your CalPERS Disability Retirement Election Application* (PUB 35), which explains these deadlines. On cross-examination, the analyst acknowledged the May 30, 2023, cancellation letter sent to Respondent contained no deadline to reapply and did not identify the missing workers' compensation form as the reason for cancellation.

Documentary evidence of CalPERS' internal notes of Respondent's file documented two subsequent calls with Respondent: a July 25, 2023 call in which Respondent was told her application had been cancelled because the Workers' Compensation Carrier Request form had not been received and that she would need to resubmit a complete application if she wished to apply; and an August 24, 2023 call in which Respondent was again told the application had been cancelled per the May 30, 2023 notice and that she would need to complete a new application. At hearing, CalPERS argued these contemporaneous notes established that Respondent had actual notice of both the cancellation and the need to reapply, such that her six-month window under Government Code section 20160 to seek correction had already expired well before she filed the Second SPIDR Application in May 2024. The internal notes were admitted into evidence.

Respondent testified that she did everything within her control to submit a complete service pending industrial disability retirement application. She testified she made several attempts with Respondent CDCR to have the outstanding Workers'

Compensation Carrier Request form submitted, and that on May 18, 2023, she was told by Respondent CDCR that the adjuster had 30 days to complete the form and send it directly to CalPERS. Respondent testified she was never given a deadline within which to reapply after the cancellation, and that nothing she received stated she had six months to submit a new application. Respondent further testified that had the Workers' Compensation Carrier Request form been timely returned by her employer, she would not have needed to submit a second application. In support of her position, she identified and entered into evidence several email exchanges with Respondent CDCR in which she requested that they timely submit the required form to CalPERS.

The Proposed Decision

After considering all the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent's appeal. The ALJ found Respondent's testimony credible, including her testimony that she completed and forwarded every document within her own control and made repeated, documented efforts to have the outstanding Workers' Compensation Carrier Request form completed and returned. The ALJ found the evidence at hearing, including Respondent CDCR's internal email correspondence, established that the form was in the hands of Respondent CDCR and its workers' compensation carrier and that the carrier was to send it directly to CalPERS, yet failed to do so.

The ALJ further found that despite her application being submitted more than six months after she was made aware of the cancellation, Respondent acted diligently and inquired about her application on multiple documented occasions and was never specifically advised she would need to apply within six months. The ALJ found the delay that caused cancellation of the application was attributable to Respondent CDCR, not to Respondent, and concluded it was correctable under Government Code section 20160. Specifically, the ALJ held that the failure to return the form was an omission of a state department under subdivision Government Code section 20160, subdivision (b) and that the Board's duty to correct under subdivision (b) is mandatory and not conditioned on the six-month limitation in subdivision (a)(1). Alternatively, the ALJ held that Respondent satisfied Government Code section 20160, subdivision (a)(1) by measuring the six-month period from April 17, 2024, the last date CalPERS told Respondent she could submit an application.

Staff’s Argument for Remand

While staff does not challenge the ALJ's finding that the Respondent testified credibly regarding her efforts to have the required form submitted to CalPERS, Staff respectfully submits that the ALJ incorrectly analyzed Government Code section 20160 and therefore recommends that the Board decline to adopt the Proposed Decision and refer the matter back to OAH pursuant to Government Code section 11517, subdivision (c)(2)(D).

First, although subdivision (b) of section 20160 directs that the Board "shall" correct all actions resulting from errors of a state agency or department, that mandatory duty is expressly subject to subdivisions (c) and (d). Subdivision (d) itself requires the party seeking correction to establish the right to correction under subdivision (a). Subdivision (a)(1), in turn, requires that a request for correction be made within six months "after discovery of [the] right [to correction]." Thus, even if Respondent CDCR's omission caused the May 2023 cancellation, Respondent was still required to meet the six-month requirement in subdivision (a)(1).

CDCR's conduct does not explain Respondent's nearly nine-month delay in reapplying for IDR after CalPERS told her in July and August 2023 that she needed to do so.

The Proposed Decision incorrectly concludes that, because subdivision (b) is subject only to subdivisions (c) and (d), "it is not conditioned on the six-month limitation in subdivision (a)(1)." (Proposed Decision at p. 16 (Legal Conclusion 6).) The Decision failed to recognize that the six-month limitation in subdivision (a)(1) is incorporated by subdivision (d), which places on "the party seeking correction" the burden of establishing "the right to correction pursuant to subdivisions (a) and (b)." A member who invokes subdivision (b) for her own relief is still the party seeking correction, and must show her request was made within six months of discovering the right. The word "shall" in subdivision (b) describes the Board's duty once that right is established. It does not relieve the member of establishing it.

Second, the additional basis identified by the ALJ for granting Respondent's appeal—that she had satisfied Government Code section 20160, subdivision (a)(1) by applying within six months of "the date on which CalPERS itself last confirmed the right to reapply remained available—also misconstrues the statute.

As noted above, Government Code section 20160, subdivision (a)(1), requires the request to be made "within a reasonable time ***after discovery of the right to make the correction***, which in no case shall exceed six months ***after discovery of this right***." (Emphasis added.) The six-month period, then, runs from discovery of the right to correction—as in, discovery of facts that give rise for a correction—not from the last time CalPERS confirmed Respondent could reapply.

Respondent learned of the cancellation, its cause, and the need to reapply on July 25, 2023, and was told again on August 24, 2023. The six-month period ended before she reapplied in May 2024.

The ALJ stated that the decision to measure the six-month period from April 17, 2024, when CalPERS last told Respondent that she could submit another application, was driven by the fact that Respondent stated CalPERS staff never told her of a deadline to reapply. (Proposed Decision at pp. 19-20 (Legal Conclusions 16, 18).) While the cancellation letter stated no deadline, this fact does not relieve Respondent of her burden to establish that she submitted her application within six months "after discovery of the right to make the correction," as required by subdivision (a)(1). The statute runs from the member's discovery of the facts supporting correction, not from the member's

awareness of the time limitation on when she could submit an application. Under the Proposed Decision's interpretation, the six-month period would not begin until CalPERS advised a member of a deadline, a notice requirement that the statute does not contain.

Staff therefore requests remand to allow the ALJ to make findings on these issues under a correct application of Government Code section 20160.

Technical Corrections

Upon remand, for clarity, staff requests that any revised proposed decision include the following technical corrections: "Bryan Delado" be changed to "Bryan Delgado" on page 1; "210 days" be changed to "120 days" on page 8, paragraph 31; "(Gov. Code, § 2026.)" be changed to "(Gov. Code, § 20026.)" on page 14, paragraph 2; "a reasonable time after discovery or" be changed to "a reasonable time after discovery of" on page 15, paragraph 4; and "Government Code sections 20160, subdivision (e), and 21525" be changed to "Government Code section 20160, subdivision (e)." on page 22, paragraph 3.

Conclusion

For these reasons, Staff respectfully requests that the Board decline to adopt the Proposed Decision and refer the matter back to the Office of Administrative Hearings under Government Code section 11517, subdivision (c)(2)(D), so the ALJ may take additional evidence and issue a revised proposed decision addressing:

1. Whether Respondent sought correction within six months of discovering the right to correction under Government Code section 20160, subdivision (a)(1), with discovery measured from her knowledge of the operative facts giving rise for the need to seek correction, rather than from her awareness of the limitations period or CalPERS' later statements that she could submit an application.

2. Whether Respondent met her burden under Government Code section 20160, subdivision (d), to establish that her delay in reapplying from August 2023 to May 2024 resulted from mistake, inadvertence, surprise, or excusable neglect under Government Code section 20160, subdivision (a)(2), notwithstanding Respondent CDCR's earlier omission under subdivision (b).

November 18, 2026

Bryan Delgado
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