

ATTACHMENT B

STAFF'S ARGUMENT

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

John P. Fallis (Respondent) was a Correctional Officer for California Rehabilitation Center, California Department of Corrections and Rehabilitation (Respondent CDCR). By virtue of his employment, Respondent was a state safety member.

Service Retirement Application

On August 13, 2020, CalPERS received Respondent's application for service retirement with a requested effective retirement date of December 2, 2020. Respondent subsequently retired for service effective December 2, 2020.

Industrial Disability Retirement Application #1

On September 4, 2020, Respondent contacted CalPERS asking if he could complete his application for industrial disability retirement. CalPERS informed Respondent that he needed to submit a hardcopy application (as opposed to online) for industrial disability retirement. On the same day, CalPERS mailed "A Guide to Completing Your CalPERS Disability Retirement Application" (PUB 35) to Respondent. PUB-35 sets forth the eligibility requirements for disability retirement, the deadlines to apply, blank copies of necessary forms, and detailed instructions on how to apply.

On November 2, 2020, two months after he inquired whether he could file an application for industrial disability retirement, Respondent filed the application. By letter dated November 4, 2020, CalPERS returned the application to Respondent (i.e., did not accept it) because it was missing multiple pages, did not include a retirement payment option selection, and was not signed as required. CalPERS mailed Respondent a second PUB 35 with his incomplete application. Respondent did not appeal the return of the application or correct the application and send it back to CalPERS.

On December 24, 2020, December 29, 2020, June 22, 2021, July 14, 2021, and July 16, 2021, CalPERS received medical records from Respondent's workers' compensation carrier, State Compensation Insurance Fund (SCIF).

Industrial Disability Retirement Application #2

On June 3, 2021, six months after his first industrial disability retirement application was returned to him due to missing information, Respondent contacted CalPERS by phone to ask what he needed to submit for an industrial disability retirement. A CalPERS employee informed Respondent what forms he needed to include with his application. Those forms included the following: Workers' Compensation Carrier Request form, Physician's Report on Disability, Report of Separation and Payroll, Physical

Requirements of Position, Job Duty Statement. CalPERS also told him to provide any medical records.

On June 22, 2021, Respondent submitted a second industrial disability retirement application with an effective retirement date of December 2, 2020, and claimed orthopedic conditions (back and left leg) and high blood pressure. The second application did not contain all the required forms. On June 23, 2021, CalPERS requested that Respondent provide a completed Workers' Compensation Carrier Request form, Authorization to Disclosure Protected Health Information form, and medical records. The letter further notified Respondent that, if the requested documents were not received within 21 days, his application would be canceled. Respondent did not provide the requested documents.

On July 7, 2021, CalPERS contacted Respondent and sent him a letter giving him until August 4, 2021, to provide the Workers' Compensation Carrier Request form and Physician's Report on Disability form. Respondent was placed on notice that if he did not submit the required documentation, his application would be canceled.

Respondent did not provide the required documentation. On August 4, 2021, CalPERS notified Respondent that the second application he filed was canceled. Respondent did not appeal the cancellation.

Industrial Disability Retirement Application #3

Approximately a year and a half later, on February 1, 2023, Respondent contacted CalPERS asking if CalPERS could request the information needed from his doctors for his disability retirement application. In response, CalPERS mailed a third PUB 35 to Respondent.

On February 3, 2023, a CalPERS employee contacted Respondent and advised him about the disability retirement application process. Respondent told the employee that his previous two applications had been cancelled because he could not obtain all the required medical documentation. The employee again informed Respondent of all the documents needed.

On February 23, 2023, more than two years after his effective service retirement date, Respondent submitted a third application for industrial disability retirement with an effective retirement date of December 2, 2020. On this application, Respondent claimed disability based on orthopedic condition (lumbar spine).

By letter dated March 23, 2023, CalPERS requested information from Respondent and CDCR regarding Respondent's request to change from service retirement to disability retirement, to determine if a correctable mistake was made within the meaning of applicable law that would permit CalPERS to receive the late application. Respondent provided answers on April 11 and April 13, 2023.

On April 13, 2023, CalPERS contacted Respondent and sent him a letter giving him until May 4, 2023, to provide the missing documents, including medical records. Respondent was placed on notice that if he did not submit the required documentation, his third application would be canceled.

Respondent did not provide the required documentation. On June 26, 2023, CalPERS notified Respondent that his third application for industrial disability retirement was cancelled because the required medical information had not been received. CalPERS also advised Respondent of his appeal rights.

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 September 23, 2024. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing and a default was taken as to Respondent CDCR only pursuant to Government Code section 11520, subdivision (a).

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.

Respondent testified on his own behalf that he understands CalPERS contends that his application is late, but CalPERS did not tell him that until the last letter they sent. He had a hard time getting his documentation together because it was during the COVID-19 pandemic. Respondent admits that he received all the letters that CalPERS sent, and even though his applications were sent back or rejected, they should all be considered "one continuous application" and not considered late. He claimed that he was hurt on the job, so his applications have always been about filing industrial disability retirement not disability retirement. When asked why after his first application was rejected in November 20, 2020 he waited until June 2021 to file his second, Respondent testified he thought it was a "continuous process" and he would just check things "online." Respondent feels that he was diligent in filing his applications. Respondent did not call any witnesses to testify on his behalf.

CalPERS presented evidence and testimony to support the timeline of applications, cancellations and communications with Respondent over the years. The ALJ found that "CalPERS went to great lengths to not only explain the industrial disability retirement application process, but to also get the proper information to Respondent."

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent had the burden of proof, and he did not meet his burden. The ALJ found that while CalPERS has authority to correct errors or omissions concerning service and disability retirements if the error is due to mistake, inadvertence, surprise or excusable neglect, in no event may CalPERS correct any mistake when the request comes more than 6 months after discovery of the mistake. Respondent initially inquired about disability retirement in August 2020, and he

was provided with a PUB 35 explaining the process and what forms were required. He was aware of the mistakes in his original disability retirement election application in November 2020. He retired for service effective December 2, 2020. Despite being placed on notice of the disability retirement process, and the need to timely file a complete disability retirement application, Respondent filed several incomplete disability applications.

The ALJ found the first application was “properly” returned to him. Respondent then waited another seven months to submit his second incomplete disability retirement application. Again, CalPERS informed him of missing documents, and the ALJ found that CalPERS “properly” canceled his second application. Approximately a year and a half later, Respondent submitted his third incomplete disability application. Despite being extremely late, CalPERS gave Respondent an opportunity to cure his untimely submission by answering a series of questions aimed at determining whether the late application was the result of mistake, inadvertence, surprise, or excusable neglect. Based on his responses, the ALJ found that CalPERS “properly” canceled his third application. The ALJ reasoned that Respondent had many discussions with CalPERS employees, received the PUB 35 on multiple occasions, and had the disability retirement application process explained to him numerous times. The ALJ found no evidence that Respondent’s failure to timely and correctly file any of his disability retirement applications was the result of mistake, inadvertence, surprise or excusable neglect. Although Respondent would like to consider his applications as part of one continuous process, they are not. The ALJ found that CalPERS acted properly in canceling his late application.

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 in the SUMMARY section, page 3, “21060” be replaced by “20160”, and in paragraph 8, page 6, last sentence, the word “and” be replaced by “any”.

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

January 13, 2025

Bryan Delgado
Attorney