

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

Jesus Castillo (Respondent) was employed by Paroles and Community Services Division, California Department of Corrections and Rehabilitation (Respondent CDCR) as a Parole Agent I. By virtue of his employment, Respondent is a state safety member of CalPERS.

Effective December 31, 2013, Respondent retired from service. He has been receiving his service retirement benefits since January 2014.

In April 2014, Respondent filed a late application for industrial disability retirement (IDR) and requested CalPERS change his service retirement to an IDR. CalPERS sent Respondent letters on April 10, 2014, and May 12, 2014, asking Respondent for additional information. Both letters to Respondent provided in relevant part:

### **NOTICE TO MEMBER**

**Cooperation in providing the requested information is essential to CalPERS' efforts to reach a determination, however, we cannot proceed without it and will cancel the request to change from service to disability retirement if we do not receive a written response within 30 days from the date of this letter. A cancellation notice will be forwarded upon expiration of the 30 days. Since you are currently on the service retirement roll, if your disability retirement application is canceled, you will not be permitted to reapply for disability retirement in the future (emphasis in original).**

Respondent did not respond to the letters or provide CalPERS with the requested documents. CalPERS sent Respondent a letter in June 2014 informing him that his IDR application was cancelled.

CalPERS sent Respondent a detailed letter on July 9, 2014, explaining that his IDR application was cancelled because he did not respond to the letters CalPERS sent him in April and May 2014. The July letter provided Respondent with a phone number to contact CalPERS “[i]f Respondent [had] any questions.”

Four years later, in July 2018, Respondent contacted CalPERS to state that his workers' compensation case was resolved. He asked CalPERS how to change his service retirement to disability retirement.

CalPERS sent a copy of PUB-35 (Guide to Completing Your Disability Retirement) to Respondent in March 2019.

On October 10, 2019, Respondent visited CalPERS' Glendale Regional Office in person. During his visit, Respondent said he was told by someone at CalPERS that he should wait for his workers compensation case to be resolved before re-applying for IDR. There is no supporting evidence showing that CalPERS provided this advice. Instead, the record shows that CalPERS staff advised Respondent to complete a new IDR application and to provide any information requested. Respondent was provided with an IDR application and another PUB-35.

On February 8, 2023, Respondent visited CalPERS' Glendale Regional Office in person and applied for Service pending IDR. Respondent claimed disability based on his heart (quintuple bypass) and orthopedic (neck, back, right, and left shoulders, carpal tunnel on right and left hands) conditions. Respondent requested a retroactive retirement date of December 31, 2013.

By letter dated June 22, 2023, CalPERS requested additional information from Respondent regarding his request to change from Service to IDR. The letter notified Respondent, in relevant part:

In general, a member cannot change their retirement status after they retire or refund their contributions (Government Code section 20340.) An exception can be made if the error or omission was because of a mistake, inadvertence, surprise or excusable neglect. No exception can be made for a mistake caused by a member's failure to make an inquiry that would be made by a reasonable person in like or similar circumstances (Government Code section 20160) . . . . To determine if a correctable mistake was made, we need [Respondent] to provide information regarding the circumstances at the time [Respondent] separated from CalPERS covered employment.

Respondent provided responses to CalPERS' request for additional information by letters dated June 22, 2023, and July 11, 2023.

CalPERS reviewed his responses, previous applications, and correspondence with CalPERS and determined that Respondent did not make a correctable mistake that would permit him to change his retirement status. CalPERS notified Respondent of its determination by letter dated July 27, 2023

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 12, 2024. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing and a default was taken as to Respondent CDCR.

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 and clarified how to obtain further information.

At the hearing, CalPERS explained that after reviewing all relevant information, including his prior IDR applications and responses to CalPERS' request for additional information, and after considering Government Code section 20160 and other applicable precedents, CalPERS determined Respondent's member status ceased on December 31, 2013, when he retired for service. CalPERS found that Respondent did not submit a timely request to change his status from service to disability retirement.

CalPERS further explained that Respondent knew or should have known that his application for IDR was cancelled in June 2014. Respondent waited, without any reasonable basis, for over eight years to reapply for IDR. As a result, CalPERS determined that Respondent did not make a correctable error and it could not grant his request to change his service retirement to disability retirement and accept his late IDR application.

During the hearing, Respondent was afforded the opportunity to testify and submit documentary evidence to support his appeal. Respondent chose not to testify and did not submit any documentary evidence to support his appeal.

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 provide evidence to support his claim that CalPERS told him in 2014 to wait until his worker's compensation case concluded to reapply for IDR. The ALJ concluded that Respondent failed to establish by a preponderance of the evidence that he is entitled to relief under Government Code section 20160, which would allow CalPERS to accept his untimely IDR application. Specifically, Respondent did not establish that his 2023 application for IDR was made in a "reasonable time" after he knew or should have known in 2014 of the cancellation of his IDR application. Respondent waited over eight years to reapply without demonstrating his delay was due to "mistake, inadvertence, surprise, or excusable neglect."

In the Proposed Decision, the ALJ concluded that Respondent failed to establish that his delay of eight years was due to mistake, inadvertence, surprise, or excusable neglect pursuant to Government Code section 20160. The ALJ denied Respondent's appeal and affirmed CalPERS' denial of his request to accept his late application and change from service to disability retirement.

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 removing 20160, 20340 and 21453, and adding 21151 in the parentheses at the top of page 3; removing "and uncertain" on page 14, paragraph 6; and replacing "(§ 20340, subd. (a))" with "(§ 21152 subd. (d))" on page 14, paragraph 8 of the Proposed Decision.

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

November 20, 2024

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Austa Wakily  
Senior Attorney