

ATTACHMENT C

**RESPONDENT'S ARGUMENT REGARDING THE PETITION FOR
RECONSIDERATION**

Honorable CalPERS Board Members

This is my petition asking you to reconsider your decision to deny my late application.

After speaking to a PERS representative on July 16, 2021, I learned that I made a mistake on my disability application. The inadvertent mistake that I made was that I checked disability retirement when I should have checked industrial disability retirement. The PERS representative tried to see if the error could be corrected, but I was later informed I would have to resubmit my application. PERS received my complete application on September 20, 2021.

Government Code Section 20160 (a) gives the Board the ability to correct errors made by a retiree if they meet the requirements of subsections (1) (2) and (3).

Government Code Section 20160 (a) (1), states, that I had to request a correction within six months (180 days) of discovery of the mistake. I discovered the mistake on July 16, 2021. I was informed that I would have to resubmit my application on July 20, 2021. PERS received my complete industrial disability package on September 20, 2021. I made my request for correction in 64 days, far less than required by this statute.

Government Code Section 20160 (a) (2), the mistake made on my disability application was due to a lack of knowledge about the process. Even after consulting PERS representatives for assistance with filing my disability application a mistake was still made. At the time of filing, I was an injured employee, there was no medical opinion or evidence that my injury was job related. Completing an application claiming my injury was job related without proof seemed deceitful. I was not aware of the finality of selecting disability retirement compared to industrial disability retirement. It seemed reasonable that if my injury was determined to be job related that it should then be processed as such and not confined to a selection made when the cause of the injury was unknown. The medical evaluation determining that my injury was job related concluded in June of 2021. Section 473 (a) (1) of the Code of Civil Procedure provides the authority to correct a mistake in the name of a party, or a mistake in any other respect upon any terms as may be proper and just. PERS Board members can correct my inadvertent mistake made through inattention when I checked the wrong box on my application. Furthermore, PERS required that I file another application for industrial disability after I discovered there was a mistake on my disability application. Section 473 of the Code of Civil Procedure allows the Board to extend the timeframe for filing through excusable neglect on my part. This would be appropriate since I discovered the mistake in July 2021 after my injury was established as job related in June of 2021. I then submitted my complete application in September 2021, well within the six-month timeframe to file.

Government Code Section 20160 (a) (3), if the correction is made, I will receive a benefit that others with my same or similar job-related injury are receiving. That benefit is strictly federal tax savings and there is no cost to PERS.

The pandemic complicated the application process by prohibiting face-to-face contact. If I had been able to meet with a PERS representative, I believe the mistake made on my application would have been avoided. I have gone through the process of trying to fix this mistake and I have failed. Partially because it's a system that I have no experience in and I'm not a lawyer, so I did not adequately cover the reasons to correct the mistake during the hearing that I've detailed in this letter. I'm asking the Board, that has the authority to correct mistakes, that they correct my inadvertent mistake of marking the wrong check box on my application. My misunderstanding of the application process for industrial injury is the only reason I'm not getting the benefit that other disabled safety employees are receiving.

Respectfully,

A handwritten signature in black ink, appearing to read "Dwayne May". The signature is stylized with a large, looped "D" and a distinct "M".

Dwayne May