

ATTACHMENT A

THE PROPOSED DECISION

**BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**In the Matter of the Appeal for an Earlier Effective Date of
Disability Retirement of:**

TIMOTHY MENO,

and

**GOLDEN GATE BRIDGE HIGHWAY AND TRANSPORTATION
DISTRICT,**

Respondents.

Agency Case No. 2022-1028

OAH No. 2023050177

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on September 5, 2023, by videoconference.

Senior Attorney Noelle Lamprecht represented the California Public Employees' Retirement System (CalPERS).

Respondent Timothy Meno was present and represented himself.

No appearance was made by or on behalf of respondent Golden Gate Bridge Highway and Transportation District.

The record closed and the matter was submitted for decision on September 5, 2023.

ISSUE

Did CalPERS err in refusing to grant respondent Meno an earlier effective retirement date based on the mistake statute (Government Code section 20160)?

FACTUAL FINDINGS

1. Respondent Timothy Meno (respondent) was employed by the Golden Gate Bridge Highway and Transportation District (District) as a bus servicer. By virtue of his employment, respondent became a local miscellaneous member of CalPERS.
2. Respondent injured his head and neck on the job in March 2020. He was treated at the hospital that day and subsequently received treatment through workers' compensation, including surgery. He never returned to work.
3. On February 26, 2021, the District reported to CalPERS that respondent had been off the payroll for six months and was determined to be permanently separated as of August 24, 2020. CalPERS sent respondent a letter dated February 26, 2021, titled "Options at Separation." The letter identified retirement as one option, and advised respondent to "submit your retirement application within nine months of separating from employment to receive the earliest retirement date" and that by "submitting your retirement application more than nine months after separation from

employment, your retirement date can be no earlier than the first of the month in which your application is received." The letter also directed respondent's attention to the CalPERS website to review the publications and forms available there. One such document available on the website is the Disability Retirement Election Application (Publication 35).

4. On May 20, 2021, respondent contacted CalPERS and requested a one-on-one appointment. An appointment was scheduled for May 25, 2021. The CalPERS representative mailed Publication 35 to respondent and another letter explaining his options at separation. Publication 35 advises members to apply "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 months."

The publication also advises, "if you have a workers' compensation claim, you should not wait until your condition is 'permanent and stationary' under workers' compensation requirements to submit your application. Delaying your application for retirement may affect important benefits you may be entitled to receive."

The directions for filling out the application state, "the effective date of your retirement can be no earlier than the day following your last day on payroll, as long as your application is **received by CalPERS within nine months** of that date. If not, the retirement date can be no earlier than the first of the month in which CalPERS receives your application." (Emphasis in original.)

5. A CalPERS representative called respondent on May 25, 2021, for the scheduled appointment. The representative explained how to complete the disability retirement application and submitted a request on respondent's behalf for a service

retirement estimate and a disability retirement estimate. These estimates were sent to respondent on May 26, 2021, and June 8, 2021, respectively.

6. On August 26, 2021, respondent called CalPERS and requested a service retirement application, which was mailed to him.

7. On October 8, 2021, respondent called CalPERS and asked for information about disability retirement. The CalPERS representative provided information about the application process. Another Publication 35 was mailed to him.

8. Respondent submitted an application for service retirement on November 30, 2021. He stated that his last day on payroll was August 23, 2020. He requested November 30, 2021, as the date of retirement.

9. On May 10, 2022, respondent called CalPERS for information about applying for disability retirement. The representative advised respondent about the documentation that must be submitted with the application.

10. On May 25, 2022, respondent submitted two applications for disability retirement. The first one was missing the even-numbered pages. The second one contained all 12 pages. Respondent stated that his last day on payroll was March 30, 2021. He requested a retirement date of April 1, 2021.

11. On June 1, 2022, CalPERS notified respondent that his first May 25, 2022, application for disability retirement was missing pages and required other corrections to be processed. Respondent called CalPERS on June 10, 2022, and asked for help filling out the disability retirement application. An appointment was scheduled for June 30, 2022.

12. On June 21, 2022, CalPERS notified respondent that his second May 25, 2022, application for disability retirement was rejected because it lacked the signature of a notary public or CalPERS representative and because he marked "Industrial Disability Retirement" when he should have selected "Disability Retirement" as the application type. Respondent was directed to complete a new application and comply with this requirement, and was advised to submit it as soon as possible.

13. Respondent spoke with a CalPERS representative on June 30, 2022, who provided guidance on submitting his application. Respondent submitted a complete application for disability retirement, including the signature of a notary public, that same day. Respondent stated his last day working was March 30, 2020, and he requested April 1, 2021, as the retirement date.

14. According to CalPERS's records, respondent submitted another application for service retirement on August 9, 2022. This application was not admitted into evidence at the hearing. Nor was it established why the application was necessary in light of the previous application for service retirement respondent submitted on November 30, 2021, as discussed in Finding 8.

15. On August 22, 2022, CalPERS notified respondent that his application for service retirement had been processed, with an effective retirement date of November 30, 2021; that a retroactive payment would be issued to him on September 6, 2022; and that he would begin receiving monthly payments on October 1, 2022.

16. Also on August 22, 2022, CalPERS wrote to respondent and the District requesting information relevant to his request for an earlier retirement date. Respondent responded to the request but the District did not.

17. On November 22, 2022, CalPERS notified respondent that his application for disability retirement was approved, that his status would be changed from service retirement to disability retirement, and that his benefits would be adjusted retroactive to his retirement date of November 30, 2021.

18. In a separate letter sent on November 22, 2022, CalPERS informed respondent that his request for an earlier retirement date of April 1, 2021, was denied.

19. On December 6, 2022, respondent appealed from the denial of an earlier retirement date, and this hearing followed.

20. Associate Governmental Program Analyst Linda Ha testified at hearing to explain CalPERS's decision not to grant an earlier retirement date to respondent. CalPERS concluded that respondent had not submitted his application within nine months of his last day on payroll, which is required for him to be entitled to a retirement date earlier than the first of the month in which the application was submitted.

21. Respondent testified that after he was injured on the job and opened a workers' compensation case, the District refused to communicate with him. Respondent explained that he did not understand his employment status and sought clarity from the District without success, and that he sought help from the District with the retirement process and was told that he was "not being offered disability retirement." His expectation was that his employer would sit down with him and explain the process for applying for disability retirement and help him fill out the paperwork, and he is frustrated that this did not happen.

22. Respondent found the process of applying for disability retirement difficult and confusing. He called CalPERS, visited the San Jose office in person, and

even watched a video on YouTube for guidance, but “something was always wrong” when he tried to apply. He requested April 1, 2021, as his retirement date because that is when he stopped receiving benefits from workers’ compensation.

23. When respondent was injured, he initially hoped that he would be able to return to work. He eventually underwent surgery on his neck. He remains unsteady on his feet and uses a cane. He also experiences numbness in his neck, hands, and toes. He feels like he was “thrown away” by the District and is disappointed that he was “thrown under the bus” and not assisted in the process of applying for his retirement benefits.

LEGAL CONCLUSIONS

1. Government Code section 21154 provides that an application for disability retirement may be submitted:

(a) while the member is in state service, or (b) while the member for whom contributions will be made under Section 20997, is absent on military service, or (c) within four months after the discontinuance of the state service of the member, or while on an approved leave of absence, or (d) while the member is physically or mentally incapacitated to perform duties from the date of discontinuance of state service to the time of application or motion.

2. Government Code section 21252, subdivision (a), provides:

A member's written application for retirement, if submitted to the board within nine months after the date the member discontinued his or her state service, and, in the case of retirement for disability, if the member was physically or mentally incapacitated to perform his or her duties from the date the member discontinued state service to the time the written application for retirement was submitted to the board, shall be deemed to have been submitted on the last day for which salary was payable. The effective date of a written application for retirement submitted to the board more than nine months after the member's discontinuance of state service shall be the first day of the month in which the member's application is received at an office of the board or by an employee of this system designated by the board.

3. Government Code section 20160 provides:

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction 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.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part. Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(b) Subject to subdivisions (c) and (d), 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.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 20164.

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting

documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

(3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

4. The evidence failed to establish that respondent's failure to submit a retirement application within nine months of his last day on payroll was a correctable mistake.

Respondent became aware in February 2021 at the latest that he had been separated from his employment, and was sent information about his options. He contacted CalPERS in May 2021, and received information about the process for applying for service and disability retirement, and was warned that delaying his application could adversely affect the benefits he would be entitled to receive. Respondent did not submit any application until he applied for service retirement in November 2021. He submitted his first (incomplete) application for disability retirement in May 2022. Respondent's application for service retirement was granted in August 2022, with an effective retirement of November 30, 2021.

Respondent's complete application for disability retirement was submitted in June 2022 and was approved. His service retirement was converted to disability retirement, retroactive to the November 30, 2021, date of retirement.

Respondent testified credibly about his frustration with his employer for failing to provide more assistance, and with the difficulty he had understanding and filling out the application for disability retirement. Nonetheless, respondent did not make the inquiry that would be made by a reasonable person in like or similar circumstances, and his delay in applying for retirement was not reasonable. Accordingly, he has not met his burden of establishing that he is entitled to correction of his mistake pursuant to Government Code section 20160.

5. Respondent's last day on payroll for the District was in August 2020. (Factual Finding 3.) Respondent's initial retirement application was received more than

nine months later, on November 30, 2021. (Factual Finding 8.) CalPERS correctly determined that respondent is not entitled to a retirement date of April 1, 2021, in light of Government Code section 21252, subdivision (a).

ORDER

The appeal of respondent Timothy Meno of the November 22, 2022, determination letter denying his request for an earlier retirement date is denied.

DATE: 09/29/2023

Karen Reichmann

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings