

ATTACHMENT A

THE PROPOSED DECISION

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

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

MARY D. COLEMAN,

Respondent,

and

CALIFORNIA DEPARTMENT OF VETERAN AFFAIRS,

Respondent.

Agency No. 2023-0634

OAH No. 2024030373

PROPOSED DECISION

Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on May 23, 2024.

The record closed and the matter was submitted for decision at the conclusion of the hearing.

Nhung Dao, Attorney, represented California Public Employees' Retirement System (CalPERS).

Mary D. Coleman (respondent) represented herself.

No appearance was made by or on behalf of the California Department of Veteran Affairs (Department), and the matter proceeded by default as to this respondent.

SUMMARY

Respondent appeals CalPERS' denial of her application for industrial disability retirement benefits, and her request for a retroactive retirement date more than two years before she submitted her retirement application. Respondent, a licensed vocational nurse (LVN) for the Department before she retired, suffered on-duty injuries to her neck, left shoulder, left elbow, lower back, and both hands. However, respondent failed to meet her burden of establishing by a preponderance of the evidence that she is substantially incapacitated from performing her usual and customary duties as an LVN for the Department. Because respondent filed her application more than nine months after she discontinued her state service, and failed to prove she is substantially incapacitated, she is not eligible for the retroactive effective retirement date she requests. Furthermore, since respondent made a miscalculation in her decision when to file her retirement application, as opposed to an error or omission, she is not entitled to the relief available under Government Code section 20160. Therefore, respondent's appeal is denied.

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FACTUAL FINDINGS

Parties and Jurisdiction

1. CalPERS is a defined benefit plan administered under the California Public Employees' Retirement Law (PERL). (Gov. Code, § 20000 et seq.; subsequent undesignated statutory references are to this code.) CalPERS is governed by its Board of Administration (Board). (Ex. 1.)

2. Respondent was employed as an LVN by the Department. By virtue of her employment, respondent was a state miscellaneous member of CalPERS subject to section 21150. Respondent has the minimum service credit necessary to qualify for retirement. (Ex. 1.)

3. On May 11, 2022, respondent submitted a signed application for Service Pending Industrial Disability Retirement to CalPERS (application), requesting an effective retirement date retroactive to January 1, 2020. In filing the application, respondent claimed disability on the basis of orthopedic (left shoulder, left elbow, bilateral hands, neck, and lower back) conditions. (Ex. 3.)

4. Respondent was approved for service retirement effective May 1, 2022, and she has been receiving a monthly retirement allowance since then. (Ex. 5.)

5. By letter dated May 5, 2023, CalPERS notified respondent and the Department of its determination to deny her industrial disability retirement application and request for an earlier effective retirement date. Respondent was advised of her right to appeal this determination. (Ex. 4.)

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6. By letter dated June 6, 2023, respondent appealed CalPERS' decision to deny her application for industrial disability retirement and request for an effective retirement date retroactive to January 1, 2020. (Ex. 6.)

7. Based on the above, the issues on appeal are: (a) Whether at the time of the application, on the basis of orthopedic (left shoulder, left elbow, bilateral hands, neck, and lower back) conditions, respondent is substantially incapacitated for the performance of her usual and customary duties as an LVN for the Department; and (b) Whether respondent made a mistake as a result of inadvertence, mistake, surprise, or excusable neglect correctable by section 20160 that entitles her to an earlier effective retirement date of January 1, 2020. (Ex. 1.)

Respondent's Work History and Job Duties with the Department

8. Respondent began state employment in August 2007 with the California State Prison System. She worked in the prison system until 2015. (Ex. 8, p. A59.)

9. In 2015, respondent began employment with the Department as an LVN. (Ex. 8, p. A59.) She last worked there in October 2019. (Ex. 14, p. A242; Testimony [Test.] of Linda Ha.)

10. As an LVN for the Department, respondent worked 40 hours per week. Her job duties consisted of working in a clinic, checking vital signs, administering medication and injections, giving safety instructions to or assisting the veterans, and working on a computer. (Ex. 8, p. A69, Ex. 9.)

11. According to the Department's Job Duty Statement for respondent's position, she was required to lift, push, and pull medical record carts weighing more or less than 25 or 30 pounds, bend, reach, and stand. (Ex. 9.)

12. The Department completed a Physical Requirements of Position form regarding respondent's position. Respondent signed the form without suggesting any revision. According to the form, respondent was constantly required to carry items weighing less than 25 pounds, and occasionally carry items weighing 25 to 50 pounds. She was frequently required to power grasp. (Ex. 10.)

Respondent's Workplace Injuries and Medical Treatments

LEFT SHOULDER, LEFT ELBOW, AND NECK

13. During the evening of July 11, 2019, in the course of her employment with the Department, respondent was helping a patient who fell to the floor. When respondent bent down, the patient grabbed her and pulled her to the floor. Respondent immediately felt pain in her left shoulder and left elbow, which radiated to her neck. Respondent was able to finish her shift and return to work the following day. The incident was reported to respondent's supervisor on the same day, and a report was filed. On a date not established, respondent filed a Workers' Compensation claim. (Test. of respondent; Ex. 8.)

14. Respondent was referred by the Department to the Physical Medical Clinic and was evaluated by Dr. Stephen R. Greene. An MRI scan of respondent's left shoulder was performed, which revealed a partial tear of her rotator cuff. Respondent was prescribed medications. Physical therapy (PT) for her left shoulder was recommended. Respondent was placed off work for three days and was advised to return to work on modified duty. (Test. of respondent, Ex. 8.)

15. Respondent underwent PT for her left shoulder from July 2019 to September 2019 at Proactive Work Health. Respondent found the sessions somewhat beneficial. She was on modified duty at work during this period. (Ex. 8, pp. A67, 78.)

16. From 2019 to 2020, respondent received five cortisone injections for her neck and shoulder, recommended and administered by Dr. Benham Sam Tabibian at a clinic in Beverly Hills. Respondent was referred to Dr. Tabibian by her Workers' Compensation attorney. Respondent found the injections beneficial. (Ex. 8.)

HANDS AND LOWER BACK

17. Respondent attributes problems with her hands and lower back to cumulative trauma suffered from 2010 (while working for the prison system) through October 2019 (while working for the Department) as a result of repetitive and prolonged work activities. She noticed a worsening of her pain in May 2011, which is when she reported her situation to a supervisor. A report was filed. (Ex. 8.)

18. Respondent was referred by the prison system in May 2011 to Sierra Medical Group and was evaluated by Dr. George Balfour. X-rays of her hands were performed, which revealed carpal tunnel syndrome. Respondent was prescribed pain and anti-inflammatory medications and was provided with a hand brace. PT for her hands was recommended. She was put off work for a month. (Ex. 8.)

19. Respondent underwent PT for her hands in 2011 and 2012 at Dr. Balfour's office. Respondent found the PT was beneficial. (Ex. 8.)

20. Although not clear, the preponderance of the evidence established that respondent's last day of work for the Department was October 18, 2019. By that time, respondent still experienced pain in her lower back, as well as pain, tingling, and numbness in her hands. (Ex. 8, p. A78.)

21. Respondent had carpal tunnel release surgery on her right hand in January 2020, which she found beneficial. In December 2022, she had cortisone

injections in one or both hands, which she also found beneficial. (Test. of Dr. John Kaufman; Ex. 8.)

CalPERS' Review of Respondent's Application

22. Upon receipt of respondent's application, CalPERS requested medical reports and information concerning her medical condition. CalPERS received and reviewed all the medical evidence submitted, including records from Drs. Greene, Tabibian, and Balfour, as well as Drs. Edward Green, Brian Solberg, Katayoon Shahrokh, and Sam Bakshian. Many of these doctors were involved in respondent's Workers' Compensation case. (Ex. 4.) As discussed in more detail below, CalPERS also referred respondent to Dr. John Kaufman for an independent medical examination (IME).

23. With regard to respondent's request for a retroactive retirement date, CalPERS sent written questionnaires to both respondent and the Department to determine if she made a mistake in not filing for disability retirement at or near the time she discontinued her service with the Department. (Test. of Ha; Exs. 12, 13.)

24. CalPERS received a written response to the questionnaire sent to respondent. (Ex. 14.)

25. CalPERS also reviewed its Customer Touch Point file for respondent, which listed all of her contacts with CalPERS since becoming a member. (Test. of Ha; Ex. 15.)

26. In response to CalPERS' questionnaire, respondent indicated she first became aware she could apply for disability retirement on January 19, 2021; she was later given the same information on March 4, 2021. (Test. of Ha; Ex. 14.)

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27. In response to CalPERS' questionnaire, respondent also stated she told the Department in January 2021 she had to stop working for them due to her condition, which at that time had reached maximum medical improvement. (Test. of Ha; Ex. 14.)

28. Respondent's Customer Touch Point file shows that on March 18, 2021, respondent and someone from the Department called CalPERS to ask about disability and industrial disability retirement. The person from CalPERS taking the call told them to download CalPERS' Publication 35, and explained the processing timeframes for a disability application. (Test. of Ha; Ex. 15.)

29. Respondent's Customer Touch Point file shows that on May 27, 2021, respondent called CalPERS again about disability retirement. She was advised that she could apply online or submit a paper application. CalPERS soon after mailed to her its Publications 35 and 43, which discuss disability and service retirement. Respondent was advised the disability retirement processing time was usually four to six months. (Test. of Ha; Exs. 11, 15.)

30. CalPERS' Publication 35 advises in pertinent part:

You should apply for disability or industrial disability retirement 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 consecutive months or will result in death.

(Ex. 11, p. A99.)

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31. In response to CalPERS' questionnaire, respondent indicated she participated in an interactive process with the Department, during which they provided her with information regarding disability retirement in January 2021, March 2021, November 2021, April 2022, and May 2022. (Test. of Ha; Ex. 14.)

32. Respondent's Customer Touch Point file shows that on November 30, 2021, respondent had a retirement counseling appointment with an employee of CalPERS, during which the disability retirement steps were explained to her. Respondent was advised to have her doctors and employer complete the requisite disability forms. (Test. of Ha; Ex. 15.)

CalPERS' Medical Evaluation of Respondent

33. On April 27, 2023, respondent was seen for an IME by board-certified orthopedic surgeon John Kaufman. (Test. of Dr. Kaufman; Exs. 7, 8.)

34. As part of the IME, Dr. Kaufman interviewed respondent, examined her, and reviewed pertinent medical records. Dr. Kaufman prepared a report of his examination and findings. (Ex. 8.) He also testified at hearing.

35. Dr. Kaufman's examination revealed the following signs of pain in the areas identified by respondent in her application. The muscles on the side of respondent's neck were tight and spasming. She exhibited decreased range of motion in her neck. Respondent's lower back also had slight spasms and decreased range of motion. Respondent had some sensitivity in her fingers and hands, reduced sensation in her left index finger. Her range of motion in both hands was good. Respondent's left elbow showed some signs of tenderness. (Test. of Dr. Kaufman; Ex. 8.)

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36. After reviewing respondent's medical records and the findings of his examination, Dr. Kaufman reached the following conclusions. Respondent probably had degenerative disc disease (arthritis) in her neck and lower back, normal for someone of her age. Respondent had a partial tear of her left rotator cuff, but not the type that usually causes impairment. Dr. Kaufman found no objective evidence of impairment or limitation in respondent's left shoulder or left elbow. Respondent had carpal tunnel syndrome in both hands. However, her right hand was doing well after the surgical release; her left hand experienced discomfort and loss of some feeling, which Dr. Kaufman characterized as "annoying" but not impairing. (Test. of Dr. Kaufman; Ex. 8.)

37. In his IME report, Dr. Kaufman noted he went over with respondent the Job Duty Statement and Physical Requirements of Position documents completed by the Department for her LVN position. He concluded there were no specific job duties or physical requirements respondent was unable to perform due to any of her physical complaints. (Test. of Dr. Kaufman; Ex. 8, p. A74.)

38. Based on the above, Dr. Kaufman opined respondent does not have actual and present orthopedic impairment in her neck, left shoulder or elbow, lower back, or hands that substantially incapacitates her for performance of the usual job duties of an LVN for the Department. (Test. of Dr. Kaufman; Ex. 8.)

39. Respondent testified Dr. Kaufman had the wrong patient file when he began her IME. She discovered that after he asked her a few questions that did not relate to her. Respondent testified Dr. Kaufman retrieved her file and completed the examination. Respondent felt strongly enough about the incident to complain to CalPERS about it after she received the IME report. (Ex. 15, p. A234-235.) Dr. Kaufman testified he did not remember that happening and he did not confuse respondent with

another patient. It is not necessary to resolve this factual dispute. It is clear from Dr. Kaufman's IME report that all of the information related to respondent and not another person. Even if he had started the IME with another patient's chart, he clearly finished with respondent's. Respondent failed to demonstrate how that situation, if it occurred, undercuts the validity of Dr. Kaufman's conclusions.

40. Respondent testified her left shoulder and arm are still spasming. Dr. Kaufman testified he did not notice that when he examined respondent, she did not mention it to him during the examination, and he did not detect any atrophy in either area. The lack of atrophy demonstrated to Dr. Kaufman that respondent's left shoulder and arm are not impaired.

41. Respondent testified her right hand is still bothersome, including a trigger finger and inability to fully open her hand. Dr. Kaufman testified he did not notice that when he examined respondent, she did not mention it to him during the examination and, in any event, such a condition would be annoying but not an impairment to her work.

CalPERS' Determinations

42. After reviewing all of the medical information submitted by respondent, as well as Dr. Kaufman's IME report, CalPERS determined respondent's orthopedic (left shoulder, left elbow, bilateral hands, neck, and lower back) conditions were not disabling. As a result, CalPERS concluded respondent was not substantially incapacitated for the performance of her job duties as an LVN with the Department, and denied her application for industrial disability retirement. (Test. of Ha; Ex. 4.)

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43. CalPERS determined that the PERL does not allow for an effective retirement date more than nine months before a retirement application is received, unless the member can demonstrate he or she made an error or omission correctable by section 20160. CalPERS reviewed the information supplied by respondent in answering its questionnaire and contained in her Customer Touch Point file. CalPERS concluded the evidence showed respondent had full knowledge of the disability retirement application process and timeframes well before she submitted her application. Therefore, she failed to demonstrate she made an error or omission correctable by section 20160. (Ex. 4.)

44. Linda Ha is an Associate Governmental Program Analyst with CalPERS. She has reviewed respondent's file, particularly with regard to a retroactive retirement date. In her testimony, Ms. Ha highlighted the following salient parts of respondent's application chronology. Respondent stopped working in October 2019, and by no later than January 2021 she told the Department she could no longer work for them. Respondent became aware of the process for filing a disability retirement application in January 2021. By May 2021, she would have read in Publication 35 that she should file an application as soon she was aware she could no longer work for the Department. Based on this chronology, Ms. Ha concluded respondent purposefully decided to wait to file her application until May 2022. Therefore, Ms. Ha believes respondent did not make an error or omission correctable by section 20160. (Test. of Ha; Ex. 4.)

Respondent's Evidence and Contentions

45. Beginning in 1998, respondent worked as a part-time nurse for Kaiser Permanente (Kaiser); she continued in that capacity while she worked for the Department. After retiring from the state, respondent has worked full-time for Kaiser

as a hospice nurse. In that job, she visits patients in hospice, goes over their medications, and provides supportive care. Respondent testified her current Kaiser job does not require strenuous activity. She also testified she is given accommodations by Kaiser, such as being allowed to use an electronic blood pressure monitor because she cannot use her hand to pump a manual blood pressure cuff.

46. Respondent testified her primary reason for filing an industrial disability retirement application was to note for the record that she incurred injuries while working for the state, and that she was not able to return to work because the Department refused to provide her with appropriate accommodations. She does not contend she is unable to work. She is a hard worker and would have returned to the Department if she were able to do her LVN job there.

47. The record does not contain a response from the Department to CalPERS' questionnaire. The little evidence presented on the topic does not establish what happened during the interactive process between respondent and the Department, or what work accommodations were requested or offered.

48. Respondent testified doctors who evaluated her in the Workers' Compensation case concluded she is in permanent and stationary status now. She also testified orthopedic physician Sam Bakshian believes she needs surgery to her left shoulder and left hand to relieve her pain. In this regard, respondent's testimony is corroborated by Dr. Kaufman's medical note after reviewing some of Dr. Bakshian's records. (Ex. 8, p. A87.) However, respondent submitted none of the medical records from her Workers' Compensation case.

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49. Respondent testified she delayed filing her application because she hoped the Department would give her appropriate accommodations, or she would heal enough to do her job. She requested a retirement date of January 1, 2020, because that is when the Department refused to allow her to return to her job without modified duties. She requests reimbursement of wages not paid by the Department after they "put her out" of her job until she filed her retirement application.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. An applicant for an industrial disability retirement has the burden of proving by a preponderance of the evidence that she is entitled to it. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

2. Pursuant to section 20160, subdivision (d), a member seeking CalPERS to make a correction of an error or omission has the burden of presenting documentation or other evidence to the Board establishing the right to a correction. Because no law requires otherwise, this burden requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

3. The preponderance of the evidence standard requires respondent to present evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Industrial Disability Retirement

4. Pursuant to section 21150, subdivision (a), a member may be retired for disability if he or she is credited with five years of state service, regardless of age

[unless the person has elected to become subject to sections 21076 or 21077, which respondent has not done], and the member is incapacitated for the performance of duty.

5. Pursuant to section 20046, a retirement may be an industrial disability retirement if the death or disability in question was "a result of injury or disease arising out of and in the course of his or her employment as such a member."

6. Section 20026 requires the "disability" and "incapacity for performance of duty" as a basis of retirement to be "of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the [B]oard, . . . on the basis of competent medical opinion."

7. Pursuant to section 21154, a disability retirement application may be filed (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.

8. "If the medical examination and other available information show to the satisfaction of the [B]oard, . . . that the member . . . is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the [B]oard shall immediately retire him or her for disability." (§ 21156, subd. (a)(1).)

9. The term "incapacitated for the performance of duty" has been defined to mean "the substantial inability of the applicant to perform his usual duties."

(Mansperger v. Public Employees' Retirement System (1970) 6 Cal.App.3d 873, 876–

877 (*Mansperger*.) An applicant does not qualify for a disability retirement when she can perform the essential duties, even though she is unable to perform some duties that are rarely required; or when performing her duties sometimes may be difficult or painful. (*Mansperger, supra*, 6 Cal.App.3d at pp. 876-877; *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 856-857.)

Effective Retirement Date

10. The effective date of a disability retirement is determined by a two-step test set forth in section 21252, subdivision (a). That subdivision provides:

A member's written application for retirement, if submitted to the [B]oard 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 [B]oard, 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 [B]oard 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 [B]oard or by an employee of this system designated by the [B]oard.

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11. Under certain circumstances, the Board has discretion to correct a member's errors or omissions. Those circumstances are set forth in section 20160, which CalPERS agrees is available to respondent in this case. Section 20160 provides in pertinent part:

(a) Subject to subdivisions (c) and (d) [not relevant in this case], the [B]oard 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.

Analysis

APPLICATION FOR INDUSTRIAL DISABILITY RETIREMENT

12. Section 21156, subdivision (a)(1), requires competent medical evidence to show an applicant is substantially incapacitated from performing his or her duties. In this case, the only admissible medical evidence on this topic is from Dr. Kaufman, who opined respondent is not substantially incapacitated from performing her duties. Respondent has injured many parts of her body, and she has experienced pain and discomfort from those injuries. But the record here shows none of her injuries, individually or collectively, are substantially impairing her ability to work as an LVN for the Department. Dr. Kaufman found no such impairment after examining respondent and reviewing her medical records. While respondent would experience pain, discomfort, and annoyance working with such injuries, the case law cited above dictates such experience does not constitute a substantial incapacity. (Factual Findings 8-21, 22, 33-41, 42, 45-48; Legal Conclusions 4-9.)

13. The only other medical evidence touching on respondent's physical status emanates from some of the doctors caring for her relative to her Workers' Compensation case. None of those doctors' reports were submitted at hearing by respondent. Even if they were, it is axiomatic that the standard of disability in a Workers' Compensation case is lower and different than the standard in this case and thus would not support a finding that respondent is substantially incapacitated for the performance of her usual and customary duties as an LVN for the Department within the meaning of the PERL.

14. Respondent essentially argues she should be deemed substantially incapacitated because the Department refused to extend her modified duty or provide her with work accommodations, and since January 2020 has not allowed her to return to work. Because the Department did not appear in this matter, and respondent presented no documentation from the Department, the extent of this situation was not established. Assuming respondent is correct, such a situation still does not prove she is substantially incapacitated for duty within the meaning of the PERL.

15. For example, it has been held that where an employer refuses to return an employee to work due to injury, but the employee is unable to qualify for a disability retirement, the involved employer is required to reinstate its employee to his or her former position. (See, e.g., *Leili v. County of Los Angeles* (1983) 148 Cal.App.3d 985, 988-989, and *Raygoza v. County of Los Angeles* (1993) 17 Cal.App.4th 1240, 1245-1246.) Here, this means that if respondent's description of her situation is correct, the Department would be required to reinstate her to her former position, since she does not qualify for an industrial disability retirement. If the Department refuses, respondent's remedy would be to file a petition for writ of mandate compelling the Department to do so.

REQUEST FOR EARLIER EFFECTIVE RETIREMENT DATE

16. Section 21252, subdivision (a), is written in the conjunctive, thus making it a two-part test. First, the application must be submitted within nine months after the date the member discontinued his or her state service. In addition, based on the word "and" placed between the two requirements, if the member is seeking disability retirement, he or she must have been physically or mentally incapacitated to perform his or her duties from the last date of state service to the date the application was

filed. If one of the two requirements is not met, the effective date is the first day of the month in which the application was filed.

17. In this case, respondent's industrial disability retirement application was submitted well more than two years after she discontinued her state service. As concluded above, respondent also failed to establish she was physically or mentally incapacitated to perform her duties from the last date of state service to the date she filed her application. Thus, respondent does not meet either of the two requirements of section 21252, subdivision, (a), and is not eligible to have an effective retirement date earlier than the first day of the month in which her application was received, i.e., May 1, 2022. (Factual Findings 1-6, 23-32, 43-44; Legal Conclusions 10, 16.)

18. CalPERS argues the only way respondent can avoid the consequences of section 21252 is by showing she made an error or omission in deciding when to file her retirement application that is correctable by section 20160. Considering the evidence, respondent failed to meet her burden of establishing she made an error or omission within the meaning of section 20160. She was advised early by both the Department and CalPERS of the process and timeframe for filing a disability retirement application. Instead of filing her application when she knew she would not be able to return to work, respondent decided to delay doing so while hoping either the Department would allow her to return to work or she would heal sufficiently from her injuries. Thus, respondent did not make an error or omission; she made a miscalculation that has led to negative consequences in terms of her effective retirement date. A miscalculation is not the same thing as an error or omission correctable by section 20160. (Factual Findings 1-6, 23-32, 43-44, 49; Legal Conclusions 11, 17.)

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Disposition

19. Respondent failed to meet her burden of establishing by a preponderance of the evidence that she is substantially incapacitated for the performance of her duties as an LVN for the Department. Therefore, she is ineligible for an industrial disability retirement. (Factual Findings 1-22, 33-41, 42, 45-49; Legal Conclusions 1-9, 12-15.)


20. Respondent failed to meet her burden of establishing by a preponderance of the evidence that she made an error or omission as a result of inadvertence, mistake, surprise, or excusable neglect correctable by section 20160 that entitles her to an effective retirement date of January 1, 2020. (Factual Findings 1-49; Legal Conclusions 1-19.)

ORDER

CalPERS' denial of respondent Mary D. Coleman's application for industrial disability retirement is affirmed.

CalPERS' denial of respondent Mary D. Coleman's request for an effective retirement date retroactive to January 1, 2020, is affirmed.

DATE: 06/19/2024


Eric C. Sawyer (Jun 19, 2024 15:42 PDT)

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings