

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter Regarding the Late Application for Industrial
Disability Retirement of:**

**DAVID L. JUST and CALIFORNIA STATE PRISON
SACRAMENTO, CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION, Respondents**

Agency Case No. 2024-0028

OAH No. 2024041158

PROPOSED DECISION

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on August 13, 2024, in Sacramento, California.

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

David L. Just (Just) appeared and represented himself.

There was no appearance by or on behalf of California State Prison Sacramento (CSPS), California Department of Corrections and Rehabilitation (CDCR). A notice of

hearing was properly served on CDCR. Consequently, this matter proceeded as a default against CDCR under Government Code section 11520, subdivision (a).

Evidence was received, the record closed, and the matter was submitted for decision on August 13, 2024.

ISSUE

Whether Just made an error or omission as a result of mistake, inadvertence, surprise, or excusable neglect correctable by Government Code section 20160, which would allow CalPERS to accept his late application for industrial disability retirement (IDR).

FACTUAL FINDINGS

Jurisdictional Matters

1. CalPERS is the state agency responsible for administering retirement benefits to eligible employees. (Gov. Code, § 20000 et seq.) Just was previously employed by CDCR as a correctional officer at CSPS. By virtue of that employment, he is a state safety member of CalPERS.

2. On June 26, 2023, CalPERS received Just's application for IDR. In a letter dated November 16, 2023, CalPERS refused to accept the application due to its late filing, which was not deemed a correctable mistake. Just timely appealed CalPERS's decision.

3. On April 23, 2024, Sharon Hobbs, in her official capacity as Chief of CalPERS's Disability and Survivor Benefits Division, signed and thereafter filed the Statement of Issues for purposes of the appeal. The matter was then set for an evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

CalPERS's Evidence

JUST'S APPLICATIONS AND COMMUNICATIONS WITH CALPERS

4. On September 5, 2018, CalPERS received Just's application for service retirement. On that date, CalPERS sent him a letter acknowledging receipt of his application and advising him he may be entitled to receive a disability retirement if he was unable to work due to illness or injury. He retired for service effective December 20, 2018, and has been receiving a monthly retirement allowance since that date.

5. On January 2, 2020, Just contacted CalPERS to inquire about changing his service retirement to disability retirement. He explained that after he retired for service in December 2018, he was diagnosed with a health condition which was thought to exist prior to his service retirement. A CalPERS analyst answered his questions and advised him of the disability retirement process. The analyst entered extensive notes of the conversation into the CalPERS customer touch point report database, which were received in evidence at hearing. The notes, once entered, cannot be deleted or altered in any way.

6. The analyst also sent Just a copy of CalPERS's Publication 35 – Disability Retirement Application (PUB 35), which explains how to apply for disability retirement. The following language appears under the heading "Eligibility Requirements for Industrial Disability Retirement" in PUB 35:

An industrial disability means that you are unable to perform the usual duties of your job with your current employer because of a job-related injury or illness. If your application for industrial disability retirement is approved, you will receive a monthly retirement payment for the rest of your life, or until you recover from your disabling injury or illness.

7. On June 13, 2023, Just appeared for an in-person appointment with CalPERS looking to change his retirement election from service retirement to IDR. A CalPERS representative answered his questions and provided him with the necessary forms to review.

8. On June 26, 2023, CalPERS received Just's application for IDR. In filing the application, disability was claimed due to a cardiovascular condition. By letter dated August 23, 2023, CalPERS requested additional information and documents from Just and CDCR to determine if a correctable mistake was made. The letter also informed Just of the following:

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).

9. CDCR never responded to the request for additional information. CalPERS received Just's response to the request on September 11, 2023. In his response, Just explained he did not apply for IDR prior to his service retirement date because he was only diagnosed with the cardiovascular condition after he retired for service.

TESTIMONY OF GREG NEILL

10. Greg Neill has been employed by CalPERS since February 2023. He works as an Appeals Analyst in the Disability Survivor Benefits Division and is the CalPERS employee most familiar with Just's application for IDR and the reason for its denial.

11. Mr. Neill explained that application for IDR must be made when a member is in state service, absent on military leave, or physically or mentally incapacitated. Additionally, a member may apply for IDR within four months after discontinuance of state service. Just retired from service with CDCR effective December 20, 2018. He ceased to be a CalPERS member as of that date. In the absence of one of the other three exceptions, he was therefore required to submit his application for IDR within four months of discontinuation of service with CDCR. His IDR application was deemed late because it was received approximately four and a half years after the discontinuation of his service with CDCR.

12. CalPERS determined Just was first informed of the opportunity to apply for disability retirement when he received the first payment acknowledgment letter, dated September 5, 2018. He received disability retirement counseling from a CalPERS analyst on January 2, 2020. The analyst then sent him a copy of the PUB 35, which further explained how to apply for disability retirement. Consequently, CalPERS concluded that it could not except Just's application because a correctable mistake

had not been made when he applied for service retirement. CalPERS notified Just and CDCR of its decision by letter dated November 16, 2023. Just appealed the decision by letter dated November 29, 2023.

Just's Evidence

13. Just testified at hearing. He worked for CDCR for over 23 years as a correctional lieutenant. His health had nothing to do with his decision to retire for service. However, shortly before retiring, he underwent a physical examination, during which cardiac tests revealed he had suffered a prior heart attack on an unknown date. Just attributes the heart attack to the physical and psychological demands of his position as a correctional lieutenant. He was treated with the placement of four coronary stents in January 2019.

14. Just decided to file a claim for worker's compensation in 2023. He initially attempted to file the claim with CalPERS, but a CalPERS representative advised him he needed to file the claim with CDCR. The representative also advised him of the opportunity to apply for IDR. According to Just, that was the first time he ever received information on IDR and how to apply for it.

15. The State Compensation Insurance Fund sent Just for a Qualified Medical Examination (QME) with Roger Nacouzi, M.D. Dr. Nacouzi evaluated Just on October 12, 2023, using the worker's compensation standard. He concluded that because of hypertensive cardiac disease, congestive heart failure, coronary artery disease, and cardiac arrhythmia, Just was unable to perform the duties of a correctional lieutenant. According to Just, that was the first time he considered himself disabled. He believes he would have been committing fraud had he applied for IDR at an earlier date.

Analysis

16. Government Code section 21154 sets forth the timeline for filing an application for IDR:

The application shall be made only (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 discontinuance of state service to the time of application or motion. . . .

17. CalPERS received Just's IDR application on June 26, 2023. The application was untimely under Government Code section 21154, in that Just did not file the application while still in state service, within four months after discontinuance of state service, or while on military leave. Additionally, subdivision (d) does not apply to the circumstances at issue, because Just ceased being a CalPERS "member" when he retired for service effective December 20, 2018. (See Gov. Code, § 20340, subd. (a) ["A person ceases to be a member: (a) Upon retirement, except while participating in reduced worktime for partial service retirement"].) Thus, for CalPERS to accept Just's late application for disability retirement, he must demonstrate the existence of a correctable mistake as described in Government Code section 20160.

18. Government Code section 20160, subdivision (a), provides that:

Subject to subdivisions (c) and (d) the board may, in its discretion and upon 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.

19. CalPERS informed Just of his right to apply for a disability retirement by letter dated September 5, 2018. Shortly after, he learned that he suffered a heart attack while still employed as a correctional lieutenant, which he attributed to the

stress of the job. On January 2, 2020, Just contacted CalPERS to inquire about changing his service retirement to disability retirement. A CalPERS analyst answered his questions, advised him of the disability retirement process, and entered notes of their conversation into CalPERS's customer database. She also sent Just a copy of the PUB 35.

20. At hearing, Just did not deny receiving the letter dated September 5, 2018, or the PUB 35. He testified he does not recall speaking with the CalPERS analyst about IDR on January 2, 2020. However, he failed to explain how she could have entered detailed notes of the conversation into the CalPERS customer touch point report database if it never occurred.

21. The courts have recognized that "pension statutes are to be liberally interpreted in favor of the applicant so as to effectuate, rather than defeat, their avowed purpose of providing benefits for the employee and his family." (*Button v. Bd. of Admin.* (1981) 122 Cal.App.3d 730, 737, quoting *Campbell v. Bd. of Admin.* (1980) 103 Cal.App.3d 565, 571.) However, when all the evidence is considered, Just did not establish that he submitted his late IDR application due to a correctable mistake. He was informed he had suffered a heart attack before retiring in December 2018. Notwithstanding the fact that he was informed both orally and in writing of his ability to apply for IDR in 2018 and 2020, he waited approximately four and a half years after his service retirement to submit his IDR application. Thus, CalPERS appropriately determined that his late application for IDR could not be accepted pursuant to Government Code section 20160.

LEGAL CONCLUSIONS

1. A CalPERS member may apply for disability retirement. (Gov. Code, § 21152, subd. (d).) Pursuant to Government Code section 21154:

The application shall be made only (a) while the member is in state serviced, 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 application or motion.

2. Government Code section 20160, subdivision (a), provides that:

Subject to subdivisions (c) and (d) the board may, in its discretion and upon 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.

3. As the party seeking correction of an error or omission pursuant to Government Code section 20160, respondent has the burden of presenting documentation or other evidence establishing the right to correction. (Gov. Code, § 20160, subd. (d).) The burden of proof is a preponderance of the evidence (Evid. Code, § 115), which means "more likely than not." (*Sandoval v. Bank of Am.* (2002) 94 Cal.4th 1378, 1388.)

4. Based on the Factual Findings and Legal Conclusions as a whole, Just did not establish that the facts surrounding his failure to timely file for IDR constituted an error or omission correctable pursuant to Government Code section 20160. Consequently, his late IDR application was properly rejected.

ORDER

The appeal of respondent David Just is DENIED. CalPERS's decision to reject his late industrial disability retirement application is AFFIRMED.

DATE: September 6, 2024

Matthew Block

MATTHEW S. BLOCK

Administrative Law Judge

Office of Administrative Hearings