

**ATTACHMENT A**

**THE PROPOSED DECISION**

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

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

**JONATHAN W. BATES, Respondent,**

**and**

**ROWLAND UNIFIED SCHOOL DISTRICT, Respondent**

**Agency Case No. 2024-0256**

**OAH No. 2024101011**

**PROPOSED DECISION**

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on February 19, 2025.

Bryan R. Delgado, Attorney, represented complainant, Sharon Hobbs, Chief, Disability and Survivor Benefits Division, California Public Employees' Retirement System (CalPERS), State of California.

Jonathan W. Bates, respondent, did not appear, despite being properly noticed.

Rowland Unified School District, respondent, did not appear, despite being properly noticed.

This matter proceeded as a default against respondents pursuant to Government Code section 11520, subdivision (a).

The record was closed, and the matter submitted for decision on February 19, 2025.

## **ISSUE**

Did respondent<sup>1</sup> make an error or omission that was the result of mistake, inadvertence, surprise, or excusable neglect in filing his disability retirement election application on July 25, 2023, entitling him to an effective retirement date earlier than July 1, 2023?

## **SUMMARY**

Respondent did not make an error or omission that was the result of mistake, inadvertence, surprise, or excusable neglect when he filed his July 25, 2023, disability retirement election application entitling him to an earlier effective retirement date. Respondent's last day of employment with the Rowland Unified School District was in 2011. Respondent was provided information concerning the filing for a disability

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<sup>1</sup> Hereafter, any reference to respondent means respondent, Jonathan W. Bates, and not the Rowland Unified School District.

retirement in 2017, 2021, and 2022, in person, telephonically, and by publication. Under the Public Employees Retirement Law (PERL), the effective date of retirement can be no earlier than the day following a member's last day on payroll, as long as the disability retirement election application is received by CalPERS within nine months of that date. If the disability retirement election application is not received within nine months of the member's last date on payroll, the retirement date can be no earlier than the first of the month in which CalPERS receives the application.

Respondent did not file his disability retirement election application with CalPERS within nine months of his last date on payroll with the Rowland Unified School District, and therefore, CalPERS correctly determined that respondent's effective retirement date is July 1, 2023, or the first of the month in which CalPERS received respondent's application.

## **FACTUAL FINDINGS**

1. The following factual findings were derived from the testimony of Evelyn Murillo-Soria, an Associate Governmental Program Analyst in the disability retirement unit at CalPERS, and documents submitted by CalPERS that were received into evidence.

2. Respondent was last employed by the Rowland Unified School District as an Athletic Equipment Attendant in 2011. By virtue of that employment, respondent was a state safety member of CalPERS. Respondent's last day on payroll with the Rowland Unified School District was December 22, 2011.

3. Respondent did not file a disability retirement election application within nine months of his separation date from the Rowland Unified School District.

4. On January 27, 2017, six years after respondent separated from employment with the Rowland Unified School District, respondent requested information about a disability retirement. That same day, CalPERS mailed to respondent "A Guide to Completing Your CalPERS Disability Retirement Application" (PUB 35). PUB 35 provides extensive details regarding the process for correctly filing an application for industrial disability retirement, what should be provided, and cites all applicable law. Notably, PUB 35 states:

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. Once we receive all the required information described in this publication, we can begin processing your application.

[¶] . . . [¶]

Before applying for disability or industrial disability retirement, you should obtain a retirement allowance estimate to make an informed decision.

[¶] . . . [¶]

[T]he 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. . . .

5. On May 25, 2021, four years after receiving information concerning a disability retirement, and 10 years after separating from employment with the Rowland Unified School District, respondent again called CalPERS asking about a disability retirement. Notes in CalPERS's touchpoint system, which documents communications with members, documented the following (reproduced as written):

Mbr called to see how he can collect his retirement from us since he has been on disability for years. I have advised him he can apply for DR now since he is under 50 or he can wait until he is 50+ and do a SR. Mailed the schools publication as well as the SR publication to him today and advised him 7-10 days to [receive]

6. On May 25, 2021, CalPERS mailed respondent a second copy of PUB 35.

7. On July 13, 2022, respondent contacted CalPERS and requested information concerning a disability retirement. A note in CalPERS's touchpoint system stated:

Mbr called . . . wanting to see about receiving a monthly benefit. Advised him, since he has a disability, he can apply for DR or wait until he is age eligible to apply for SR. Based on separation being more than 10 years ago, the 1st day of retirement will be the 1st of the month. Confirmed based on his account, DR will pay higher than SR. Advised DR must be a paper application. Sent PUB 35, provided 7-10

business days for mailing. He can submit an estimate request to see if what his benefits are, it will take about 35 calendars to process. DR processing timeframe is 4 months. Went over the forms required. He will need to provide his doctor the physical requirement and duty statement for his doctor to certificate the physician's report. Provided him with BP's general number to see about obtaining a duty statement and completion of physical requirement form. Advised he can send a MSS or call if he has additional questions.

8. On July 13, 2022, CalPERS mailed respondent a third copy of PUB 35.

9. On March 30, 2023, respondent contacted CalPERS to request an in-person appointment, which he attended at CalPERS's San Bernardino office on May 3, 2023. On that date, respondent submitted a "Retirement Allowance Estimate Request" with a projected retirement date of August 1, 2023. A CalPERS team member explained to respondent how disability retirement benefits are calculated, the differences between survivor and lifetime beneficiaries, and the differences between his retirement options. CalPERS also advised respondent of the timeframes for submission and processing, and documents needed to submit his disability retirement application.

10. On May 16, 2023, CalPERS provided respondent his disability retirement allowance estimate for a projected retirement date of August 1, 2023.

11. On July 25, 2023, respondent appeared at the CalPERS's San Bernardino office in person and submitted a disability retirement election application. In the application, he indicated (incorrectly) that his last day on payroll with the Rowland

Unified School District was January 1, 2012. Respondent also provided a "Report of Separation and Advance Payroll Information," showing, correctly, that respondent's last day on payroll with the Rowland Unified School District was December 22, 2011.

12. Between July 25, 2023, and December 4, 2023, CalPERS worked with respondent to obtain all information necessary to render a determination on his disability retirement election application.

13. In August of 2023, CalPERS sent letters to the Rowland Unified School District and respondent containing five questions designed to determine if respondent's failure to timely request a disability retirement (within nine months of his last day on payroll) was the result of mistake, inadvertence, surprise, or excusable neglect. Respondent wrote in his response that he first became aware he could file for a disability retirement in 2017 from a coworker. Respondent's employer did not respond.

14. By letter dated December 4, 2023, CalPERS informed respondent that his disability retirement election application was approved. However, respondent's retirement date would be considered the first of the month in which he filed the disability retirement election application, or July 1, 2023. The letter also explained that because respondent had knowledge of the disability retirement application process, no correctable mistake had been made, and no earlier effective retirement date could be assigned.



15. Respondent appealed.<sup>2</sup> Respondent's appeal letter stated (reproduced as written):

When I went on permanent disability January 21, 2012 I was not informed I could apply for and receive CalPERS disability retirement benefits

On January 27, 2017 I requested the information packed be sent to me after a co worker informed me I could apply for CalPERS disability retirement benefits

On May 25, 2021 I called to inquire how to collect my retirement since I have been out on permanent disability and was advised to apply at that time

On July 13, 2022 I was counseled and provided information regarding the application process, processing time frames acceptable retirement date required documents and how to obtain the required forms form my physician and employer

On July 26, 2023 I applied for disability retirement

I was unaware I could go to the CalPERS office in San Bernardino to obtain assistance in completing the application I struggle with dyslexia and forgetfulness due to medication side effects I struggled filling out the

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<sup>2</sup> Respondent's appeal letter did not contain a date, but CalPERS did not contest the timeliness of the appeal.

application and navigating computers Until I went into the CalPERS office I was unable to fill out the application by myself . . . .

16. Following review of respondent's file, applicable law, and all documents, CalPERS adhered to its determination that respondent was not eligible for an earlier effective retirement date, and affirmed his effective retirement date as July 1, 2023.

## **LEGAL CONCLUSIONS**

### **Applicable Law**

1. The management and administration of CalPERS is vested in the Board of Administration (board). (Gov. Code, § 20120.)

2. Article XVI, section 17, subdivision (a), of the California Constitution provides in part:

The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system.

3. The board, subject to applicable law and regulations, shall determine and may modify benefits for service and disability retirement benefits. (Gov. Code, § 20123.)

4. The Constitution imposes on CalPERS a duty to "ensure the rights of members and retirees to their full, earned benefits." (*City of Oakland v. Public Employees' Retirement System* (2002), 95 Cal.App.4th 29, 46 (cited with approval in *City of Pleasanton v. Board of Administration* (2012) 211 Cal.App.4th 522, 544).)

5. Government Code section 20026 provides:

"Disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion.

6. Government Code section 20160, provides (emphasis added):

(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.

7. Government Code section 20340 provides:

A person ceases to be a member:

(a) Upon retirement, except while participating in reduced worktime for partial service retirement.

(b) If he or she is paid his or her normal contributions, unless payment of contributions is the result of an election pursuant to paragraph (1) of subdivision (b) of Section 21070, or unless, after reducing the member's credited service by the service applicable to the contributions being withdrawn, the member meets the requirements of Section 21075 or if he or she is paid a portion of his or her normal contributions where more than one payment is made, or these contributions are held pursuant to Section 21500. For the purposes of this subdivision, deposit in the United States mail of a warrant drawn in favor of a member, addressed to the latest address of the member on file in the office of this system, electronic fund transfer to the person's bank, savings and loan association, or credit union account, constitutes payment to the person of the amount for which the warrant is drawn or electronically transferred.

(c) If the member has less than five years of service credit, or less than 10 years of service credit if the member is subject to Section 21076 or 21076.5, and no accumulated contributions in the retirement fund at the time of

termination of service, unless the member establishes membership in the Judges' Retirement System, the Judges' Retirement System II, the Legislators' Retirement System, the State Teachers' Retirement System, or the University of California Retirement Plan, or establishes reciprocity with a reciprocal retirement system.

8. Government Code section 21152 provides:

Application to the board for retirement of a member for disability may be made by:

- (a) The head of the office or department in which the member is or was last employed, if the member is a state member other than a university member.
- (b) The university if the member is an employee of the university.
- (c) The governing body, or an official designated by the governing body, of the contracting agency, if the member is an employee of a contracting agency.
- (d) The member or any person in his or her behalf.

9. Government Code section 21154 provides:

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 date of discontinuance of state service to the time of application or motion. On receipt of an application for disability retirement of a member, other than a local safety member with the exception of a school safety member, the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for the performance of duty. On receipt of the application with respect to a local safety member other than a school safety member, the board shall request the governing body of the contracting agency employing the member to make the determination.

10. Government Code section 21156 provides:

(a)(1) If the medical examination and other available information show to the satisfaction of the board, or in case of a local safety member, other than a school safety member, the governing body of the contracting agency employing the member, that the member in the state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for



disability, unless the member is qualified to be retired for service and applies therefor prior to the effective date of his or her retirement for disability or within 30 days after the member is notified of his or her eligibility for retirement on account of disability, in which event the board shall retire the member for service.

(2) In determining whether a member is eligible to retire for disability, the board or governing body of the contracting agency shall make a determination on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process.

(b)(1) The governing body of a contracting agency upon receipt of the request of the board pursuant to Section 21154 shall certify to the board its determination under this section that the member is or is not incapacitated.

(2) The local safety member may appeal the determination of the governing body. Appeal hearings shall be conducted by an administrative law judge of the Office of Administrative Hearings pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of this title.

## **Burden and Standard of Proof**

11. Government Code section 20160, subdivision (d), provides that the party seeking to avail themselves of the mistake/correction provisions set forth in

Government Code section 20160 has the burden of showing a right to correct the mistake. The standard of proof is a preponderance of the evidence. (Evid. Code, §§ 110, 115, 500.) In this case, respondent has the burden of proving that he is entitled to an earlier retirement date.

## **Evaluation**

12. Respondent did not meet his burden. CalPERS has the authority to correct errors or omissions concerning disability retirements only if the error or omission was borne out of mistake, inadvertence, surprise, or excusable neglect. In no event may CalPERS correct any mistake when the request comes more than six months after discovery of the mistake. (Gov. Code, § 21060, subd. (a).)

13. Respondent separated from service with the Rowland Unified School District on December 22, 2011. As such, his disability retirement election application needed to be filed no later than nine months of that date. It was not, however, filed until July 25, 2023, 11 years later. Respondent's contention (in his appeal) that he did not know he could file for a disability retirement until 2017 when he spoke to a coworker is unpersuasive. However, even if one were to assume that respondent honestly did not know he could file for a disability retirement, respondent then had within six months of the January 27, 2017, date – when he first spoke with CalPERS about disability retirement and received a PUB 35, to file his application to be considered. He did not do that. Instead, respondent waited and received two additional PUB 35s in 2021 and 2022, and did not file his application until July 25, 2023.

14. Mistake, inadvertence, surprise, or excusable neglect, are understood as each of those terms are used in Section 473 of the Code of Civil Procedure. Case law

has also interpreted each of those provisions. Mistake, for example, must be an honest mistake "where there are no elements of negligence, laxness or indifference." (*Security Truck Line v. City of Monterey* (1953) 117 Cal.App.2d 441, 445.) Mistake is not a grounds for relief when it is the result of "ignorance of the law . . . or unjustifiable negligence in discovering the law." (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1206.) Surprise, as used in Section 473, refers to some condition or situation in which a party "is unexpectedly placed to his injury, without any default or negligence of his own, which ordinary prudence could not have guarded against." (*Ibid.*) Finally, as for inadvertence or neglect, a party's neglect "must have been such as might have been the act of a reasonably prudent person under the same circumstances." (*Ibid.*)

On this record, there is no evidence that respondent's failure to timely file his application for a disability retirement was the result of mistake, inadvertence, surprise, or excusable neglect as required by Government Code section 21060. Although respondent may not have known about how to do so in 2011, he was made aware of the process in 2017, and still failed to timely file the application. Respondent's contention in his appeal that he struggles due to dyslexia and forgets things does not change the fact that he was made aware countless times following 2017 of the need to file the application, and still chose not to do so. CalPERS worked diligently with respondent every time he called or visited the CalPERS office in San Bernardino, and respondent's long delay in filing the disability retirement election application was unreasonable and negligent.

Accordingly, CalPERS is barred by applicable law from assigning respondent an effective retirement date earlier than the first of the month in which CalPERS received his application. CalPERS correctly determined respondent's effective retirement date to be July 1, 2023, and respondent's appeal is denied.

## ORDER

The request of respondent Jonathan W. Bates for an earlier effective date of disability retirement is denied. CalPERS correctly determined his effective retirement date as July 1, 2023.

DATE: March 11, 2025



KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings