

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter of the Appeal of Accepting the Late
Application for Disability Retirement of:**

THOMAS J. MANGALATHIL, Respondent

and

**CALIFORNIA MEDICAL FACILITY, CALIFORNIA DEPARTMENT
OF CORRECTIONS AND REHABILITATION, Respondent**

Agency Case No. 2022-0129

OAH No. 2022060391

PROPOSED DECISION

Administrative Law Judge Ed Washington, Office of Administrative Hearings (OAH), State of California, heard this matter by telephone and videoconference on October 18, 2022, and December 5 and 22, 2022, from Sacramento, California.

Staff Attorney Helen Louie represented the California Public Employees' Retirement System (CalPERS).

Thomas J. Mangalathil (respondent) appeared on his own behalf.

Francis Vayalumkal provided Malayalam language interpreting services during the hearing.

There was no appearance by or on behalf of respondent California Medical Facility, California Department of Corrections (CDCR). At the hearing, CalPERS established that CDCR was properly served with the Statement of Issues and Notice of Hearing. This matter therefore proceeded as a default against CDCR pursuant to Government Code section 11520.

Evidence was received, the record closed, and the matter was submitted for decision on December 22, 2022.

ISSUE

Did respondent make an error or omission as a result of mistake, inadvertence, surprise, or excusable neglect correctable pursuant to Government Code section 20160 that would allow CalPERS to accept his late application for industrial disability retirement?

FACTUAL FINDINGS

Jurisdiction

1. By letter dated December 23, 2021, CalPERS refused to accept respondent's application for disability retirement, for reasons described below. Respondent appealed from CalPERS' determination. On June 13, 2022, Keith Riddle, Chief, Disability and Survivor Benefits Division, CalPERS, signed and authorized the

filing of the Statement of Issues giving rise to this matter in response to respondent's appeal of CalPERS' determination.¹ This hearing followed.

CalPERS' Evidence

2. Respondent was employed by CDCR as a Psychiatric Technician. By virtue of his employment, he was a state safety member of CalPERS subject to Government Code section 21151. Respondent service retired effective August 14, 2019. He received his first service retirement warrant on or about September 16, 2019, and has been receiving his service retirement allowance ever since.

3. On August 9, 2019, respondent visited the CalPERS Walnut Creek Regional Office and discussed his service retirement options with a CalPERS representative. The representative reviewed and provided respondent with CalPERS Publication 43 – A Guide to Completing Your CalPERS Service Retirement Election Application (Publication 43), which includes an application and instructions for applying for CalPERS service retirement. Within the "Other Considerations" section of Publication 43, the document specifies:

If you are disabled or can no longer perform the duties of your job, you may qualify for disability retirement or industrial disability retirement. Learn about the eligibility

¹ At hearing, CalPERS amended the Statement of Issues as follows: The words "San Bernardino," on page 2, paragraph 4, line 10 of the Statement of Issues were removed and replaced with the word "Sacramento."

requirements in our publication **A Guide to Completing
Your Disability Retirement Election Application** (PUB 35).

(Bolding original. Publication 43, page 4.)

4. On September 3, 2019, while still an active CalPERS member, respondent called CalPERS and requested a copy of the Disability Retirement Election Application. CalPERS staff discussed the Disability Retirement Election Application with respondent and sent him a copy of the April 2019 Edition of Publication 35 – Guide to Completing Your Disability Retirement Election Application (Publication 35) on the same day.

5. Publication 35 provides detailed information to CalPERS members regarding the disability retirement application process, required documentation, and timelines for completing the application process. Relevant here, the publication instructs: (1) 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 illness or injury that is of permanent or extended duration, expected to last at least 12 months, or will result in death; (2) if you think you may be eligible for service retirement, see the “Service Retirement Pending Disability or Industrial Disability Retirement” section of this publication for more information; and (3) You may apply for a disability or industrial disability retirement:

- While you are in CalPERS-covered employment; or

- Within four months of separation from CalPERS-covered employment; or

- At any time, if you “separated” from or left your job because of disability and you have remained disabled since then; or
- While on military approved leave.

(Publication 35, pages 3 & 5.)

6. The Service Retirement Pending Disability or Industrial Disability Retirement section of Publication 35 includes the following information:

You have the option to apply for a service retirement pending your disability or industrial disability retirement—if you qualify for service retirement. This would allow you to receive a monthly service retirement allowance while awaiting the determination of your disability retirement application.

To apply for a “service pending” retirement, check the Service Pending Disability Retirement or Service Pending Industrial Disability Retirement box on the Disability Retirement Election Application form. Submit your service pending disability or industrial disability retirement application to CalPERS when you are within 120 days of your retirement date...

Note: You cannot cancel your service retirement or change your retirement payment option, your designated lifetime beneficiary, or the retirement date you request on the

application **more than 30 days after the issuance of your first retirement benefit check.**

(Bolding original. Publication 35, page 8.)

7. Under the "Other Considerations" portion of Publication 35, the document provides:

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.

A workers' compensation award does not automatically entitle you to a CalPERS industrial disability retirement.

(Publication 35, page 25.)

8. Under the "Become a More Informed Member" section of Publication 35, the document lists several resources available to CalPERS members to allow them to gain knowledge about their retirement options, including the CalPERS website, the members myCalPERS account, the CalPERS Education Center, CalPERS Social Media Accounts, CalPERS toll free telephone line, and by visiting any of several CalPERS regional offices for assistance. (Publication 35, pages 70 & 71.)

9. On September 5, 2019, respondent visited the CalPERS Sacramento Regional Office and submitted an application for service retirement in which he requested a service retirement date of August 14, 2019. Respondent also requested a retirement allowance estimate request for service retirement and disability retirement,

based on an estimated retirement date of August 14, 2019. CalPERS staff provided respondent information regarding disability retirement and industrial disability retirement. The staff person provided respondent with a copy of Publication 35 and explained to respondent that he could file for service retirement pending disability retirement if he felt it was best for him after receiving his disability and service retirement estimates.

10. By letter dated September 9, 2019, CalPERS acknowledged receipt of respondent's application for service retirement and informed respondent that he may be entitled to disability retirement. Specifically, the letter, in part, provided the following:

You may be entitled to receive a disability retirement if you are unable to work because of an illness or injury. To apply for a disability retirement, you must complete a Disability Retirement Election Application. Please note that your retirement date cannot be earlier than the day following your last day on pay status.

On that same date, CalPERS approved respondent's service retirement application, effective August 14, 2019.

11. On September 13, 2019, CalPERS received respondent's Physical Requirements of Position/Occupational Title form and Employer Information for Disability Retirement form, both dated September 3, 2019, and respondent's job description. These are forms required to be submitted as part of the disability retirement application process.

12. On September 16, 2019, CalPERS received from respondent, a Report of Separation an Advanced Payroll Information form, dated September 12, 2019, and a Physician's Report on Disability form, dated September 13, 2019. These are also forms required to be submitted as part of the disability retirement application process.

13. By letter dated September 26, 2019, CalPERS provided respondent his requested service retirement and disability retirement estimates. The estimates were sent to respondent at his CalPERS address of record, which was the same address he specified on his application for service retirement.

14. On July 17, 2020, respondent called CalPERS and requested a disability retirement application. On that same date, CalPERS mailed respondent a copy of the January 2020 Edition of Publication 35.²

15. On April 13 and 23, 2021, May 14 and 28, 2021, June 18, 2021, July 8 and 22, 2021, and August 11, 2021, respondent communicated with CalPERS by telephone about the disability retirement/industrial disability retirement application processes.

16. On August 9, 2021, CalPERS received from respondent, his application for disability retirement, dated July 30, 2021. In the disability retirement application, respondent claimed disability retirement based on lower back, spine, and psychological conditions.

17. After receiving respondent's late filing for disability retirement, by letter dated September 1, 2021, CalPERS requested information from respondent regarding

² With respect to the issue for determination in this matter, the April 2019 and January 2020 editions of Publication 35 are essentially the same.

respondent's request to change from service retirement to disability retirement, to determine if a correctable mistake was made. The letter required respondent answer several questions, including (1) how he learned of disability retirement; (2) when he learned that he could file an application for disability retirement; (3) explain why he did not apply for disability retirement when he received CalPERS September 9, 2019 letter informing him that his service retirement application has been received and that he may be eligible for disability retirement; and (4) why he did not apply for disability retirement prior to his chosen retirement date of August 14, 2019. On September 2, 2021, CalPERS also sent a letter requesting the same information from CDCR. CalPERS sent a duplicate request to CDCR on September 23, 2021. CDCR did not reply to the either letter.

18. On October 12, 2021, CalPERS received a written response from respondent. In response to the question that asked why he did not file for disability retirement after receiving the September 9, 2019 letter from CalPERS or prior to his retirement date, respondent's reply included the following statements:

I was informed and recommended by my QME Doctor ... on July 18, 2019, [i]f my employer won't accommodate me with this disability, I may retire and apply for pending disability retirement. My lawyer told me he doesn't represent disability retirement cases. He told me I have to file myself or hire a different lawyer. That will cost more money. In order to file myself, I have to gather a lot of documents that were too overwhelming and my stress level was too high.

I was informed I may file for my service retirement. ... I was informed that a disability retirement case is a process that

takes time to get a decision. It may get denied, then I need to appeal and that may take months. I was financially struggling for the last few years due to the injury and my income was substantially reduced. My disability income was stopped. I [did not] have much time left in the service book, most of them I already used. ... My situation forced me to do service retirement first. In 2019, before my retirement, I came to the CalPERS Regional office and [t]hey informed me that I can file for Service Retirement and collect my service retirement money and gather all the documents and then file for Disability retirement Election Application. They told me I can file any time. Filing by myself was very overwhelming and stressful. I was looking for legal help. That may [cost] a lot of money so I decided to file myself.

19. In response to the question that asked when he learned he could file an application for disability retirement, respondent's reply included the following:

Just before I file[d] for service retirement, I know I can file for disability retirement. I was informed I could file for regular service retirement because I had 19 years of state service. My medical and mental health disability happened at work. ... Prolonged abuse altered my mental health status and I was advised I am eligible to file a disability retirement on both medical and mental health basis.

20. CalPERS reviewed the information obtained from respondent and determined it could not accept respondent's late application for disability retirement.

The bases for CalPERS determination were: (a) that respondent's CalPERS member status ended on August 14, 2019 (Gov. Code, § 20340); (b) respondent's application for disability retirement was not timely submitted (Gov. Code, § 21154); and (c) respondent did not establish that he should be allowed to correct a mistake related to his late application for disability retirement due to an error or omission as a result of mistake, inadvertence, surprise, or excusable neglect because respondent had received verbal and written instructions and guidance regarding the application process several times over the course of a two year period, which he disregarded. On December 24, 2021, CalPERS informed respondent of its determination.

Respondent's Testimony

21. Respondent testified that while working as a Psychiatric Technician for CDCR, he suffered "mental harassment" in 2008 and 2009, and suffered a back injury in 2017, that limited his ability to perform his duties. He stated CDCR refused to provide workplace accommodations for his condition, and that he was unable to find another job due to his restrictions. He experienced stress and "mental challenges" due to these circumstances that caused him to have difficulty concentrating and staying organized.

22. Respondent decided to retire from state service. However, he had trouble getting services and support from CalPERS regarding his retirement options because in-person visits to CalPERS' regional officers were temporarily prohibited due to the COVID-19 pandemic. Respondent contends that while considering his retirement options, an unidentified CalPERS representative told him that he could apply for disability retirement at "any time" after he service retired. Respondent understood that if he service retired, he could apply for disability at any time thereafter, after he gathered all the required documentation. Respondent testified that he discussed his retirement options with CalPERS representatives in-person and by telephone

approximately 24 times prior to submitting his disability retirement application and was never informed that he was or would be late applying for disability retirement, until approximately April 13, 2021.

23. Respondent conceded that he “may have missed” or misunderstood the disability retirement filing requirements and deadlines specified in the “800-page booklet” CalPERS sent him regarding the disability retirement application process. He also acknowledged that CalPERS had informed him that a late application for disability retirement may be accepted, but only under certain unspecified circumstances.

24. Respondent was also late filing his disability retirement application because he intended to hire an attorney to help him with the disability retirement application process. He knew that certain medical and work-related documents were required and wanted the assistance of a legal professional. However, respondent was unable to afford to retain a lawyer, and had to complete the application process without the assistance of legal counsel.

Analysis

25. 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 date of discontinuance of state service to the time of application or motion

26. Respondent acknowledged that he did not timely file for disability retirement in accordance with Government Code section 21154. He did not file while still in state service, while absent on military service, or within four months after the discontinuance of his state service or while on an approved leave of absence. (See Gov. Code, § 21154, subds. (a)–(c).) Additionally, subdivision (d) does not apply to the circumstances at issue, because respondent ceased being a CalPERS “member” when he service retired effective August 14, 2019. (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 respondent’s late application for disability retirement, respondent must demonstrate the existence of a correctable mistake as described in Government Code section 20160.

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

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.

28. Here, respondent was repeatedly provided with information, instructions, and documentation to timely apply for disability retirement/industrial disability retirement, or service retirement pending disability retirement/industrial disability retirement both before and after he service retired in August 2019. Beginning as early as August 9, 2019, respondent visited and called CalPERS' offices to discuss his retirement options. He was provided with CalPERS publications that not only detailed the application processes and deadlines, but also warned respondent about the consequences of missing established filing deadlines. Nevertheless, respondent waited August 9, 2021, approximately two years after his service retirement to apply for disability retirement.

29. While respondent had a pending workers' compensation claim during his period of communication with CalPERS about his retirement options, the written materials provided to him by CalPERS expressly provide that he should not wait until his worker's compensation matter was resolved to file an application for disability retirement. Although it is unfortunate respondent intended to rely on the guidance of an attorney he ultimately was unable to retain, his failure to make a reasonable inquiry himself or seek clarification as to his own obligations do not constitute correctible errors or omissions.

30. By his own admissions within his written statements, respondent was aware he had the option to apply for disability retirement as early as August 2019. He was provided written guidance and instructions from CalPERS regarding several retirement options, including the option to file for service pending disability retirement. Although he possessed that information, respondent decided to apply for service retirement, rather than disability retirement, because he concluded it was financially advantageous at the time and he wanted to hire an attorney to help him with the disability retirement application process.

31. Respondent's claim that a CalPERS representative informed him that he could apply for disability retirement "at any time" was also not persuasive given the vagueness of this assertion, the lack of any supportive documentation, and the weight of the evidence to the contrary. Respondent also failed to submit sufficient evidence to support that he had been diagnosed with any medical condition that affected his ability to timely submit his application for disability retirement.

32. 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, respondent did not establish that he submitted his late disability retirement application due to a correctable mistake. Notwithstanding the advice from CalPERS representatives, and the guidance and instruction contained in publication he requested and received from CalPERS, respondent waited approximately two years after he service retired to file for disability retirement and failed to demonstrate his failure to timely submit his disability retirement application was the result of mistake, inadvertence, surprise, or excusable neglect, even when the applicable pension statutes are interpreted liberally. Thus, CalPERS appropriately determined that his late application for disability retirement could not be accepted pursuant to Government Code section 20160.

LEGAL CONCLUSIONS

1. Respondent has the burden of proving by a preponderance of the evidence that his late-filed application for disability retirement should be accepted pursuant to Government Code section 20160. (Evid. Code, § 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that [s]he is asserting"]; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.) A preponderance of the evidence means "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.)

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

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.

3. Based on the Findings as a whole, and particularly, Findings 25 through 32, respondent did not establish that the facts surrounding his failure to timely file for disability retirement constituted an error or omission correctable pursuant to

Government Code section 20160. Consequently, his late disability retirement application was properly rejected.

ORDER

The appeal of respondent Thomas J. Mangalathil is DENIED. CalPERS' decision to reject respondent Thomas J. Mangalathil's late disability retirement application is AFFIRMED.

DATE: January 23, 2023

Ed Washington

ED WASHINGTON

Administrative Law Judge

Office of Administrative Hearings