

ATTACHMENT E

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
Retirement Date of Disability Retirement of**

DELIA R. SNIPES, Respondent,

and

**CALIFORNIA STATE PRISON, SACRAMENTO, CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION,
Respondent.**

Agency Case No. 2022-0355

OAH No. 2022080349

PROPOSED DECISION

Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by video conference on January 30, and April 5, 2023, from Sacramento, California.

Helen L. Louie, Staff Attorney, represented Keith Riddle, Chief, Disability and Survivor Benefits Division, California Public Employees' Retirement System (CalPERS).

Delia R. Snipes (respondent) appeared and represented herself.

There was no appearance by or on behalf of respondent California State Prison, Sacramento (CSPS), California Department of Corrections and Rehabilitation (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 under Government Code section 11520.

Evidence was received, the record closed, and the matter submitted for decision on April 5, 2023.

ISSUE

Did respondent make an error or omission as a result of mistake, inadvertence, surprise, or excusable neglect correctable by Government Code section 20160, that would allow CalPERS to set an earlier effective disability retirement date of May 15, 2020?

FACTUAL FINDINGS

Jurisdiction

1. On February 15, 2022, CalPERS sent a letter to respondent denying her request for an earlier retirement date. Respondent timely appealed CalPERS's denial.
2. On August 11, 2022, Keith Riddle, Chief of the Disability and Survivor Benefits Division of CalPERS, signed and caused to be filed the Statement of Issues

while acting in his official capacity. Respondent timely filed an appeal, and this hearing followed.

CalPERS's Evidence

3. Respondent was previously employed by CSPA at CDCR as a correctional officer. By virtue of her employment, respondent is a state safety member of CalPERS. Respondent's last day on payroll was April 30, 2020.

4. On March 17 and June 24, 2020, respondent called CalPERS by telephone regarding possible disability retirement. Respondent wanted to know her options. On June 24, 2020, CalPERS sent respondent a copy of its publication *A Guide to Completing Your Disability Retirement Election Application*, effective January 2020, which at page 11 states:

Note: The effective date of your retirement can be no earlier than the day following your last day on payroll, as long as your application is **received by CalPERS within nine months** of that date. If not, the retirement date can be no earlier than the first of the month in which CalPERS receives your application. [Emphasis in original.]

5. On September 30, 2020, respondent called CalPERS and inquired about disability retirement estimates. On October 6 and 7, 2020, CalPERS received respondent's requests for estimated benefits for industrial disability retirement and service retirement. On October 8, and 15, 2020, CalPERS provided respondent with her service retirement and industrial disability retirement estimates.

6. On October 30, 2020, CalPERS sent respondent a letter stating, in part, as follows:

You have received this letter because one or more of your former employers have notified us that you have permanently separated from CalPERS-covered employment. We are providing the information below to help you make an informed decision about your CalPERS membership.

[¶] . . . [¶]

When requesting retirement:

- Submit your retirement application within 9 months of separating from employment to receive the earliest retirement date.
- By submitting your retirement application more than nine months after separation from employment, your retirement date can be no earlier than the first of the month in which your application was received.

7. On January 13, 2021, following a telephone conversation between respondent and a CalPERS staff member regarding service retirement and industrial disability retirement, CalPERS sent respondent a copy of its publication *A Guide to Completing Your Disability Retirement Election Application*, effective December 2020, which at page 12, in a highlighted box states:

The effective date of your retirement can be no earlier than the day following your last day on payroll, as long as your

application is **received by CalPERS within nine months** of that date. If not, the retirement date can be no earlier than the first of the month in which CalPERS receives your application. [Emphasis in original.]

8. During May 2021, CalPERS staff members consulted with respondent by telephone approximately at least six times. On May 24, 2021, respondent signed her application for service pending industrial disability retirement (application), in which she stated her retirement date was May 15, 2020. CalPERS received respondent's application on May 26, 2021.

9. On May 27, 2021, CalPERS sent respondent a letter acknowledging her application.¹ The letter informed respondent as follows:

Because your application was received on May 26, 2021, which is more than nine months after your requested date, your Service retirement effective date is May 1, 2021, the first of the month in which your application was received. We will continue to process your application for Service retirement using this effective date. If approved for Industrial Disability retirement your requested earlier retirement date will be evaluated.

10. On October 7, 2021, CalPERS sent a letter to respondent asking her to complete a questionnaire regarding information that might justify the earlier

¹ This letter was included in respondent's evidence but is referenced here for purposes of providing a coherent chronology.

retirement date of May 15, 2020. Respondent provided the following information: (1) On February 5, 2020, evaluating physicians instructed respondent to ask her employer CDCR for reasonable accommodations regarding her allergies. (2) Respondent learned about disability retirement through her workers compensation attorney. (3) Respondent learned about disability retirement on May 19, 2021. (4) Respondent's disabling condition since April 1, 2020, is severe allergic contact dermatitis. (5) Respondent asked her employer CDCR for a reasonable accommodation on February 5, 2020. (6) Respondent participated in an interactive process regarding workplace accommodations with her employer during April 9, 2020, through January 2021. (7) Respondent did not contact CalPERS regarding disability retirement before she stopped working. (8) Respondent did not leave her employment for any reason other than a disabling condition.

11. On February 15, 2022, CalPERS sent respondent two letters. One states respondent's application for disability retirement had been approved, and her retirement status and benefits would be converted from service retirement to disability retirement retroactive to her effective retirement date of May 1, 2021. The other letter states respondent's request for an earlier retirement date of May 15, 2020, was denied because the evidence suggests respondent had knowledge of the retirement application process and that CalPERS was therefore unable to establish she made a correctable mistake.

Respondent's Evidence

12. In February 2020, a lieutenant in respondent's chain of command at CDCR placed her off work, based on his understanding respondent had a medical allergic condition that made it unhealthy for her to work in the CSPA facility. Respondent's examining physicians found she would be able to return to work with

reasonable accommodations. Respondent wanted to return to work and began working with a return-to-work coordinator at CDCR in April 2020, to develop a set of accommodations that would allow her return. She continued to interact with the return-to-work coordinator through January 2021.

13. Respondent also filed a worker's compensation claim hoping, in part, to gain accommodations that would allow her to return to work at CDCR. On May 5, 2021, respondent stipulated to the dismissal of her workers' compensation claim based on a medical opinion that her claimed allergic reactions were caused by non-industrial factors. Respondent did not return to work for the state.

14. Because respondent wanted to return to work, she waited until the workers' compensation matter concluded before she submitted her retirement application. On May 6, 2021, respondent asked the attorney who represented her in the workers' compensation matter what retirement date she should write on her retirement application. Her attorney responded by email on the same date and told her to use up her sick leave, then "use that date." Respondent then completed her application with a retirement date of May 15, 2020.

Analysis

15. Respondent had two objectives, which ultimately became incompatible. First, respondent wanted to continue working for CDCR. To that end, she participated in an interactive process regarding workplace accommodations with her employer during April 2020, through January 2021, and pursued a worker's compensation case up to May 5, 2021. Second, she wanted to obtain a retirement date approximating her last day on the CDCR payroll as April 30, 2020, but did not submit her application to CalPERS until May 26, 2021.

16. CalPERS repeatedly informed respondent that if she wished to obtain a retirement date effective on the date following her last day on payroll, she would need to apply for retirement within nine months of separating from employment. (Gov. Code, § 21252, subd. (a).) For respondent, the separation date was the date after her last day on payroll – April 30, 2020. It remained possible that respondent would return to work for the state as she engaged in an “interactive process” with a return-to-work coordinator during April 2020 through January 2021, and as she pursued her workers’ compensation claim. But she did not return to work, and her separation date remains April 30, 2020.

17. Respondent was mistaken in thinking she could obtain a retirement date in May 2020, even though she did not submit her application until May 26, 2021. However, respondent’s mistake is not correctable for two reasons. First, as stated above, CalPERS repeatedly informed respondent in writing that she would need to apply for retirement within nine months of separating from employment if she wanted to obtain the earlier retirement date. (Gov. Code, § 21252, subd. (a).) Respondent’s failure to meaningfully attend to this written information does not constitute excusable neglect. (Gov. Code, § 20160, subd. (a)(2).) Second, to the extent that respondent remained uncertain about her rights, she did not make a timely and specific inquiry with CalPERS or her attorneys to confirm she could postpone her application and still obtain an earlier retirement date. (Gov. Code, § 20160, subd. (a)(3).) She did not specifically ask CalPERS what the consequences would be if she delayed submission of her application, and there was no evidence presented that she sought legal advice regarding the consequences of postponing her application until more than nine months after she separated from state service. For all the foregoing reasons, respondent’s mistake in submitting her application more than nine months after her date of separation from state service is not correctable.

LEGAL CONCLUSIONS

1. In an administrative hearing concerning retirement benefits, the party asserting the claim has the burden of proof, including both the initial burden of going forward and the burden of persuasion, by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051, note 5.) Thus, respondent has the burden of establishing by a preponderance of the evidence that she is entitled to an earlier effective retirement date. Respondent did not meet her burden of proof.

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

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

3. As set forth in the Factual Findings, respondent submitted her application more than nine months after she separated from state employment. For this reason, CalPERS correctly set her effective retirement date as May 1, 2021 – the first day of the month in which respondent submitted her application.

4. Government Code section 20160 provides, states in pertinent part:

(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:

[¶] . . . [¶]

(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) [¶] . . . [¶]

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.

5. Respondent mistakenly believed she could obtain a retirement date effective May 2020, when she did not submit her application until May 26, 2021. However, as set forth in the Factual Findings, respondent's mistake was not

reasonable, and is not correctable. Specifically, respondent was repeatedly informed by CalPERS of the consequences of not filing her application within nine months of her separation from employment, and, to the extent she was uncertain about this, she failed to make reasonable and timely inquiries to obtain clarification. For these and all the foregoing reasons, respondent's mistake is not correctable, and she is not entitled to an earlier effective retirement date of May 15, 2020.

ORDER

Respondent Delia R. Snipes's appeal is DENIED. CalPERS's decision not to set an earlier effective disability retirement date is AFFIRMED.

DATE: April 26, 2023

Timothy Aspinwall

TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings