

**ATTACHMENT A**  
**THE PROPOSED DECISION**

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

In the Matter of the Application of:

DONN M. CANZANO,

Respondent,

and

CALIFORNIA STATE UNIVERSITY, LOS  
ANGELES,

Respondent.

Case No. 2011-1075

OAH No. 2012060862

**PROPOSED DECISION**

Administrative Law Judge Amy C. Yerkey, State of California, Office of Administrative Hearings, heard this matter on January 22, 2013, in Los Angeles, California.

Elizabeth Yelland, Senior Staff Counsel, represented Petitioner Mary Lynn Fisher, Chief of the Benefit Services Division of the California Public Employees' Retirement System (PERS).

Donn M. Canzano (Respondent) represented himself.

No appearance was made by or on behalf of Respondent California State University, Los Angeles (CSULA).

The matter was submitted on January 22, 2013.

**FACTUAL FINDINGS**

*Parties and Jurisdiction*

1. Petitioner filed the Statement of Issues in her official capacity.

PUBLIC EMPLOYEES RETIREMENT SYSTEM  
FILED February 22 2013  
Dina Orantes

2. Respondent's late wife, Janet M. Canzano, was employed as a lecturer and substitute instructional faculty member at CSULA. By virtue of her employment, Janet Canzano was a state miscellaneous member of PERS. Respondent had the minimum service credit necessary to qualify for disability retirement.

3. Prior to her death in July 2010, Janet Canzano never filed an application for disability retirement. In August 2010, Respondent applied for survivor benefits, and subsequently asked PERS to consider a late disability application.

4. By letters dated March 29, 2011, and August 22, 2011, PERS notified Respondent of its determination that his application for his wife's disability retirement was untimely (pursuant to Government Code section 21154), and that no correctable mistake had been demonstrated to allow PERS to accept the application pursuant to section 20160. Respondent was advised of his right to appeal that determination.

5. By letter dated September 6, 2011, Respondent appealed PERS' determination.

6. The parties agree that the issue in this matter is whether any correctable error or omission was made by Janet Canzano, or by Respondent acting on her behalf, or by CSULA, which prevented her from filing for disability retirement.

#### *Respondent's Employment and Medical Condition*

7. Janet Canzano began her employment at CSULA as an accounting professor in 1984. She and Respondent were alumni, and had close relationships with the department faculty. In December 1988, Janet Canzano ruptured a disk in her back. Although she taught in the spring semester of 1989, she did so while in excruciating pain. She was unable to continue teaching in the fall of 1989, and left her employment effective September 6, 1989.

8. Respondent testified at the hearing. He maintained that CSULA was aware of the circumstances under which his wife stopped working; namely, that she was disabled. According to records from CSULA, Janet Canzano's separation from employment was not due to illness, but rather because her assignments ended or her contract expired. (See Exh. 11.)

9. In 2008, Respondent became aware that his wife might qualify through disability benefits through PERS. He called to inquire about her eligibility and the application process. Because his wife had not authorized him to act as her representative at that time, PERS gave Respondent general information. In addition, PERS mailed application materials to Respondent's wife. (See Exh. 5.)

10. Respondent acknowledges that his wife received the PERS disability benefits application in November 2008. Respondent stated that he gave her the application, and she said she would fill it out, but she never did. He explained that his wife had been in a minor automobile accident in September 2008, and that it affected her physically and mentally. Respondent contended that his wife suffered from many physical and mental ailments. Respondent submitted a letter from his wife's treating physician, Walter A. Chameides, M.D., which supported his contention. Respondent further explained that he did not want to insult his wife or undermine her dignity by usurping responsibility for filling out the application. Thus, Respondent did not attempt to act as her representative. There is no dispute that while Janet Canzano was alive, she, nor anyone on her behalf, ever submitted a disability application to PERS.

11. Respondent explained the financial and emotional costs to his family over the years. He is asking for a benefit to which he believes his wife was entitled.

12. PERS has offered to pay Respondent either a onetime payment equal to the amount of contributions his wife made during her tenure, or a lifetime monthly benefit, plus health and dental benefits for life.

#### LEGAL CONCLUSIONS

1. Cause does not exist to overturn CalPERS' decision to deny Respondent's request for acceptance of a late application for disability retirement, as set forth in Findings 1 through 10, and Legal Conclusions 1 through 8.

2. Absent a statutory presumption, an applicant for a disability retirement has the burden of proving by a preponderance of the evidence that he is entitled to it. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327.)

3. The timeliness of an application for a disability retirement is governed by Government Code section 21154, which provides in part:

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.

4. The parties do not dispute that Respondent failed to file his application for disability retirement within any of the four time frames referenced in section 21154. The sole question in this case is whether he is entitled to an exemption from the constraints of that statute.

5. Respondent asserts that he is entitled to file a late application for his wife's disability retirement because of mistake, inadvertence, surprise, or excusable neglect pursuant to Government Code section 20160. It provides, 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:

(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.

6. Respondent has not met his burden of persuasion. Even if Respondent and his wife were not initially informed about PERS disability benefits, they became aware of this option in November 2008, approximately two years prior to her death. Neither Respondent nor his wife attempted to file for those benefits until several months after her death. Respondent chose not to intercede on his wife's behalf while she was still alive. There was insufficient evidence to establish that Janet Canzano's mental state prevented her from filing a disability application prior to her death. Respondent's wife's death was tragic and unforeseen; however, these circumstances do not warrant an exception under the law.

7. Equitable estoppel also does not apply to permit Respondent to file a late disability application on his wife's behalf, because Respondent cannot overcome the strong public policy reasons underlying the PERS law. (See *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462.) As requested by Complainant's counsel, official notice is taken of the precedential decision *In the Matter of the Appeal of the Decreased Level of Retirement Allowance of Harvey H. Henderson (Henderson)*, OAH No. 1997120250. "To find an estoppel here would in essence, grant CalPERS powers that were not ceded to it by the Legislature." (*Id.* at 12.) Permitting Respondent to file a late disability retirement application on behalf of his wife would expand the scope of Government Code section 21154. "That is the task of the Legislature, not [PERS]." (*Id.*)

8. Neither Respondent nor his wife submitted her application for disability retirement in a timely fashion, and Respondent failed to establish grounds for acceptance of the untimely application.

ORDER

Respondent Donn M. Canzano's appeal is denied.

DATED: February 20, 2013

  
AMY C. YERKEY  
Administrative Law Judge  
Office of Administrative Hearings