ATTACHMENT A

THE PROPOSED DECISION

ATTACHMENT A

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

In the Matter of the Statement of Issues Against: ROBERT. R. RUHR, Respondent, and CALIFORNIA DEPARTMENT OF CORRECTIONS CENTINELA STATE PRISON, Employer.	CASE NO. 2014-0096 OAH NO. 2014030366

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California on December 3, 2014.

Robert R. Ruhr, respondent, represented himself.

CalPERS' senior staff counsel Elizabeth Yelland, Esq., represented the California Public Employees' Retirement System (CalPERS).

There was no appearance on behalf of the California Department of Corrections Centinela State Prison.

The matter was submitted on December 3, 2014.

ISSUE

Did Mr. Ruhr make a correctable mistake that would allow him to submit a new application for industrial disability retirement after his previously submitted application was cancelled?

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED 5 Jan 20 15

DEFAULT

As to the California Department of Corrections Centinela State Prison, on proof of compliance with Government Code sections 11504 and 11509, this matter proceeded as a default pursuant to section 11520.

FACTUAL FINDINGS

1. Anthony Suine made and filed the Statement of Issues while acting in his official capacity as the Chief of the Benefit Services Division of CalPERS.

2. Mr. Ruhr was employed by California Department of Corrections Centinela State Prison as a correctional officer until he was retired for service effective January 30, 2010.

3. By virtue of his employment, Mr. Ruhr was a state safety member of CalPERS subject to the provisions of Government Code section 21151.[1]

4. On September 21, 2009, Mr. Ruhr met with a CalPERS agent at a regional office and signed an application for Service Pending Industrial Disability Retirement.

5. Mari Cobler, Retirement Program Specialist II, in the CalPERS Benefits Service Division, testified about the application process. She explained that at the 2009 meeting, Mr. Ruhr would have been given documents about the process, including pamphlets advising him that his failure to submit a complete application packet, including documents from his doctors, would result in his application being cancelled.

6. Mr. Ruhr failed to include a Physician's Report on Disability with his retirement application. Consequently, Ms. Cobler testified that CalPERS would have notified Mr. Ruhr in February 2010 that his application had been cancelled. However, CalPERS has no documentation to support that claim. The Customer Touch Point Report (CTP) has no entry of such notification to Mr. Ruhr, and there are no letters in Mr. Ruhr's file indicating he was notified that his application was incomplete or that it was cancelled. Although there are CTP entries that Mr. Ruhr's employer was advised in January 2010 that the packet was incomplete, this did not establish notice to Mr. Ruhr. All Ms. Cobler could produce at hearing was a copy of a form letter that "would have been sent" to Mr. Ruhr in the ordinary course of business. None of this evidence was sufficient to establish that CalPERS notified Mr. Ruhr that his initial application was incomplete or cancelled. Moreover, Mr. Ruhr's actions in 2011, inquiring about the status of his disability application, supported Mr.

---

[1] Government Code section 21151 provides that a safety member incapacitated for the performance of a duty due to an industrial disability shall be retired for disability.

Ruhr's position that he was never notified his packet was incomplete or cancelled. However, that was not the issue at hearing; the issue at hearing involved Mr. Ruhr's actions in 2011 through 2013.

7. On June 17, 2011, Mr. Ruhr contacted CalPERS to inquire about the status of his disability application. He was informed it had been cancelled in 2010 due to his failure to submit a complete application packet.

8. On June 20, 2011, CalPERS sent Mr. Ruhr a new application and an informational booklet.

9. On August 16, 2012, Mr. Ruhr submitted his second disability application. During its review, CalPERS determined that this application was also incomplete and was submitted late.

10. On April 11, 2013, CalPERS requested that Mr. Ruhr advise why his application was late and provide other information regarding his application.

11. On April 29, 2013, Mr. Ruhr wrote a letter responding to CalPERS's inquiry.

12. On October 15, 2013, CalPERS notified Mr. Ruhr that his disability retirement application was denied because he failed to establish that he made a correctable mistake pursuant to Government Code section 20160. Mr. Ruhr appealed that decision and this hearing ensued.

13. Mr. Ruhr testified that he was unaware of the fact that his first application was cancelled. He acknowledged that when he did learn it was cancelled, it took almost one year for him to file a second application, but he claimed this was due to his medical condition and the new computer system CalPERS installed. He testified that he was unable to meet with a CalPERS representative because they were not setting appointments during the new system installation and that when he called he got a recording advising that no appointments were being set. He testified he did not want to submit the second application until he could meet with a CalPERS representative to make sure he completed his second application correctly.

14. An ordinarily reasonably prudent person in Mr. Ruhr's position would have inquired concerning any time limitations involved with submitting a new application and certainly would not have waited 11 months to submit it.

15. Mr. Ruhr erred in not submitting a new application packet within six months of the June 17, 2011, date when he was advised that his 2009 application had been cancelled due to a material omission of information and that he needed to submit an entirely new, complete, disability retirement packet.

LEGAL CONCLUSIONS

Burden of Proof

1. Mr. Ruhr has the burden of proof, and that burden is by a preponderance of the evidence.

In *McCoy* v. *Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051, the Court of Appeal stated the following concerning the burden of proof in an administrative hearing:

> As in ordinary civil actions, the party asserting the affirmative at an administrative hearing has the burden of proof, including both the initial burden of going forward and the burden of persuasion by a preponderance of the evidence.

In the absence of a statutory provision to the contrary, the applicant for a benefit has the burden of proof, as the moving party, to establish a right to the claimed entitlement or benefit, and that burden is unaffected by the general rule that pension statutes are to be liberally construed. (1 Cal. Public Agency Practice, sec. 39.03[9]; see also, *Glover* v. *Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

2. Government Code section 20160, subdivision (d), provides that "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)."

Analysis

3. Mr. Ruhr made a mistake in his 2009 application by not including a Physician's Report on Disability. In June 2011, Mr. Ruhr was informed that his application had been cancelled due to his mistake and that he needed to correct the mistake by submitting a new, complete application packet. Pursuant to Government Code section 20160 (known as "the mistake statute"), Mr. Ruhr had six months to correct the mistake by submitting a new, complete application. Government Code section 20160, subdivision (a) provides, in pertinent part:

> 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***. (emphasis added.)

4. Mr. Ruhr contends that he should be exempted from the six month rule because he was unable to meet with a CalPERS representative because of the new CalPERS computer system being installed. While his desire for such a meeting was understandable, it does not exempt him from the mandates of Government Code section 20160, subdivision (a)(1).

5. CalPERS correctly asserts that estoppel does not apply in the present instance. In *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489, the California Supreme Court held that a party claiming estoppel must establish the following four elements:

(1) the party to be estopped must be apprised of the facts;

(2) the party must intend or reasonably believe that his or her conduct will be acted upon;

(3) the party asserting the estoppel must be ignorant of the true state of facts; and

(4) the party asserting the estoppel must actually rely upon the other party's conduct to his or her detriment.

Respondent failed to establish element (1) (that CalPERS was apprised of the fact that respondent did not know about the six month requirement), and/or element (2) (that CalPERS intended for respondent to rely on a lack of information when he missed the six month filing deadline). Government Code section 20160 establishes the requirement that a claimant make reasonable efforts to obtain information about any time limitations. In pertinent part, Government Code section 20160, subdivision (a)(3), provides that a member's failure "to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute" a correctable error or omission.

Mr. Ruhr acknowledged his failure to timely submit his second application. His testimony regarding why he did so was insufficient to justify the late application. No evidence introduced at hearing met the elements necessary to establish estoppel.

//

//

ORDER

CalPERS correctly determined that Mr. Ruhr's 2012 application for industrial disability was untimely, and CalPERS properly denied Mr. Ruhr's application on that basis. Accordingly, Mr. Ruhr's appeal is denied.

Dated: December 31, 2014

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings