

ATTACHMENT A
THE PROPOSED DECISION

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

In the Matter of the Application for
Industrial Disability Retirement of:

ERIC S. REINGROVER,

Applicant/Respondent,

and

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION,
INSTITUTION FOR MEN,

Contracting Entity/Respondent.

Case No. 2011-1122

OAH No. 2014010277

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 9, 2014, in San Bernardino, California.

Rory Coffey, Senior Staff Counsel, represented Petitioner Anthony Suine, Chief, Benefit Services Division, California Public Employees' Retirement System, State of California.

Andrew D. Smith, Attorney at Law, represented Applicant/Respondent Eric S. Reingrover, who was present throughout the administrative proceeding.

No appearance was made by or on behalf of the California Department of Corrections and Rehabilitation, Institution for Men.

On December 9, 2014, the matter was submitted.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED Jan. 14, 2015
C. Ondley

ISSUES

1. Was Eric Reingrover permanently disabled or incapacitated from performing the usual and customary duties of a Correctional Officer as a result of an orthopedic condition when he filed his application for industrial disability retirement on September 13, 2010?
2. If Mr. Reingrover was permanently disabled or incapacitated from performing the usual and customary duties of a correctional officer due to an orthopedic condition, is Mr. Reingrover entitled to have his application date reset pursuant to Government Code section 20160 because he excusably failed to submit an application until September 13, 2010.
3. If Mr. Reingrover is entitled to have his application date reset, on what date should his application be deemed to have been filed?

FACTUAL FINDINGS

Preliminary Matters

4. Applicant/Respondent Eric Reingrover was employed as a Correctional Officer by Contracting Entity/Respondent the California Institution for Men, California Department of Corrections and Rehabilitation (Department). By reason of his employment, Mr. Reingrover was a state industrial member of the California Public Employees' Retirement System (CalPERS) and subject to Government Code section 21151.
5. On September 13, 2010, Mr. Reingrover signed a Disability Retirement Election Application (application) that he filed with CalPERS. CalPERS received Mr. Reingrover's application on September 15, 2010. In that application, Mr. Reingrover claimed the right to receive a disability retirement on the basis of "cumulative occupational trauma causing injury to (his) spine." Mr. Reingrover represented that as a result of his condition, he was permanently incapacitated from performing the usual and customary duties of a correctional officer. In his application, he requested that his industrial disability retirement become effective "upon expiration of benefits." Mr. Reingrover's last day on the payroll was September 30, 2009, and he received temporary disability insurance benefits from September 2009 through April 2010.
6. CalPERS obtained medical records and reports related to Mr. Reingrover's condition. Neil Halbridge, M.D., an orthopedic doctor selected by CalPERS, performed a disability evaluation of Mr. Reingrover on April 19, 2011. Following its receipt of Dr. Halbridge's report, the reports of other doctors, and Mr. Reingrover's medical records, CalPERS concluded that Mr. Reingrover was not permanently disabled or incapacitated from performing the usual and customary duties of a correctional officer. By letter dated July 29, 2011, CalPERS notified Mr. Reingrover of its determination that he was not entitled to a disability retirement.

7. By letter dated August 22, 2011, Mr. Reingrover timely appealed CalPERS's adverse determination.

8. On January 2, 2014, Petitioner signed the Statement of Issues in his official capacity on behalf of CalPERS. The Statement of Issues and other jurisdictional documents were served thereafter on Mr. Reingrover and upon the California Department of Corrections and Rehabilitation, Institution for Men. The matter was set for hearing.

9. On December 9, 2014, the record in the matter was opened and jurisdictional documents were presented. No appearance was made by, or on behalf of, the California Department of Corrections and Rehabilitation. Documentary evidence was produced; the parties stipulated that the reports of respondent's doctors, Thomas Haider, M.D., David Kim, M.D., and three MRI reports would be admitted as non-hearsay evidence and that Dr. Halbridge's reports would be admitted as administrative hearsay. After the parties were given the opportunity to make closing arguments, the record was closed and the matter was submitted.

Mr. Reingrover's Testimony

10. Mr. Reingrover began work as a correctional officer on October 1, 2005. He first worked as a correctional officer at Kern Valley Correctional Facility then transferred to the California Institution for Men in Chino. His last day on payroll was September 30, 2009. After this date, he received Non-Industrial Temporary Disability benefits from September 2009 through April 2010.

Mr. Reingrover's disability claim is related to an injury he suffered on September 2, 2007. On this date, Mr. Reingrover was working as a search and escort officer when he fell down a set of stairs and hurt his left knee. As he fell, he twisted his lower back. Mr. Reingrover did not immediately report the injury to his employer. For a brief time, he treated with his personal physician and did not work for two weeks. Eventually, Mr. Reingrover reported his injury to his employer who referred him to a medical provider for treatment. At about the time he was referred for treatment Mr. Reingrover started to experience back pain. Eventually, he treated with Lauri Beth Helmsley, M.D. He continued to experience pain to his back that radiated down his left leg. Dr. Helmsley administered epidural injections. In February 2010, Mr. Reingrover began treatment with Dr. Haider. Dr. Haider recommended that he undergo back surgery. On October 13, 2011, Gerald Alexander, M.D. performed spinal lumbar fusion surgery on Mr. Reingrover at Pacific Hospital of Long Beach; fourteen screws and two plates were inserted in his back.

Mr. Reingrover experiences daily pain that limits his ability to perform his daily activities. He can't mow a lawn, and he has difficulty cleaning his bathroom because he can't bend or crouch. He is prescribed medications for pain, including patches he applies to his back, and medications to help him sleep due to the back pain. He is also prescribed a cane. The medications he takes affect his reaction time.

Although he wishes he could work as a correctional officer, Mr. Reingrover does not feel he can perform the usual and customary duties of a correctional office, including keeping the peace. Mr. Reingrover believes his physical limitations pose a safety threat. He described his specific limitations, relevant to the work of a correctional officer, as follows: He can't walk very far; he can't run to respond to alarms; he can't climb; he can't climb ladders because he would have balance problems; he can't crawl or crouch; he can't lift or carry 20 to 50 pounds; he would be unable to wrestle inmates or carry them out of a cell; he would find it hard to wear a duty belt; he can't push or pull cell doors because of pain; he can't twist his body; and he would not be able to break up fights between inmates.

11. Mr. Reingrover testified regarding conversations he had with Sonia Padilla, the Return to Work Coordinator with the California Institution for Men. In September 2009, Mr. Reingrover met with Ms. Padilla to discuss his options to return to work at the Department of Corrections. Ms. Padilla told him that he could medically transfer and/or receive a medical demotion from his job as a correctional officer. Ms. Padilla did not, however, advise Mr. Reingrover that he could apply for permanent disability retirement.

In December 2009, Ms. Padilla had another conversation with Mr. Reingrover regarding his options. Ms. Padilla told Mr. Reingrover that, in response to her December 9, 2009, request for information regarding his medical condition, his primary care doctor, Dr. Goodlow, reported that Mr. Reingrover's condition was "permanent." In her letter, Ms. Padilla asked Dr. Goodlow to state whether Mr. Reingrover's work limitations were "permanent" or "temporary." Though Dr. Goodlow informed Ms. Padilla that Mr. Reingrover's condition was "permanent," Ms. Padilla did not advise Mr. Reingrover that he could apply for industrial disability retirement.

12. Soon after his last conversation with Ms. Padilla, Mr. Reingrover contacted an attorney, Mr. Smith, to help him file an application for industrial disability retirement. His application was not filed until September 2010. Mr. Reingrover explained that this delay was necessary to gather medical information.

13. Mr. Reingrover's testimony was credible.

The Duties of a Correctional Officer

14. According to a memorandum describing the essential functions of a correctional officer, a Correctional Officer must be able to perform the duties of all the various posts that a Correctional Officer may be assigned; wear personal protective equipment including vests; range qualify in the use of firearms; be able to use a wing baton with force; disarm, subdue and apply restraints on inmates; defend self and co-workers against an inmate with a weapon; inspect inmates for contraband; walk occasionally to frequently to patrol grounds; escort inmates and visitors; run when responding to alarms or serious incidents; climb occasionally to frequently; crawl and crouch occasionally; stand occasionally to continuously; sit occasionally to continuously; stoop and bend occasionally to frequently; lift and carry objects continuously to frequently in the light to medium range,

and in the very heavy range occasionally; continuously wear equipment belt weighing 15 pounds; push and pull occasionally to frequently; reach overhead occasionally to continuously; move head and neck frequently to continuously throughout the workday and in the very heavy lifting range occasionally ; move arm occasionally to continuously; move head and wrist frequently to continuously; brace occasionally while restraining an inmate; press occasionally with legs/feet while driving a vehicle; twist the body frequently to continuously in all directions; have vision acuity of 20/60 or better in each eye without correction; have hearing acuity; perform regular duties indoors and outdoors; perform regular duties while exposed to varying weather conditions and temperatures; perform regular duties on a wide range of surfaces; remain functional with exposure to fumes, gases and various chemicals; possess the mental capacity to detect security risks; be able to be exposed to very unpleasant situations involving inmates; have the mental capacity to judge an emergency situation and determine the appropriate use of force; and have the mental capacity to recall an incident to accurately document it.

Medical Reports

NEIL HALBRIDGE, M.D.

15. Neil J. Halbridge, M.D. examined Mr. Reingrover for CalPERS and submitted several reports regarding Mr. Reingrover's ability to perform the work of a correctional officer. By the stipulation of the parties, these reports were received as administrative hearsay to the extent they supplement and explain other admissible evidence.

Dr. Halbridge initially evaluated Mr. Reingrover on April 19, 2011, and prepared a report dated April 27, 2011. Dr. Halbridge examined and interviewed Mr. Reingrover, and he reviewed numerous medical records, studies, and the job duty description for a correctional officer.

Dr. Halbridge found that Mr. Reingrover was permanently disabled from performing the customary and usual duties of a correctional officer effective October 13, 2011, when Mr. Reingrover underwent major lumbar spine surgery. He diagnosed Mr. Reingrover with degenerative disc disease at the L-4-5 and L5-S1; a 3 mm broad-based left paracentral disc protrusion with small left paracentral annular tear and left lower extremity S1 lumbar radiculitis; and left knee contusion and strain. Due to his back condition, Dr. Halbridge found that Mr. Reingrover could not run even occasionally in order to respond to alarms or serious incidents; he could not crawl and crouch; he would be unable to lift and carry continuously to frequently medium weights of a 50 pound maximum range and very heavy weights over 100 pounds; and he would be unable to physically restrain an inmate to the floor; and he could not swing a baton with force.

After Dr. Halbridge reviewed an investigation report that showed Mr. Reingrover working on a piece of equipment in a gym on January 5, 2011, and that showed him driving independently and washing his car on February 2, 2011, Dr. Halbridge reversed his prior conclusion. In a second report Dr. Halbridge prepared, dated June 15, 2011, he concluded

that Mr. Reingrover was not permanently disabled. The investigation report was not admitted and Dr. Halbridge's opinion based upon the report is not given any weight.

Dr. Halbridge wrote a supplemental report dated January 6, 2012, after he received additional medical records. While he confirmed his conclusion from April 27, 2011, that Mr. Reingrover was unable to perform the usual and customary duties of a correctional officer, he qualified his opinion by stating that he believed that "most of the disability" was due to nonindustrial or pre-existing conditions. He opined that a pre-existing condition was "aggravated" by Mr. Reingrover's fall when he twisted his low back.

Dr. Halbridge wrote a third report, dated March 30, 2012, to clarify his opinion regarding Mr. Reingrover's date of disability. Dr. Halbridge again said that Mr. Reingrover's date of disability was October 13, 2011, the date of his major lumbar surgery.

THOMAS HAIDER, M.D.

16. Mr. Reingrover submitted reports from his doctor, Thomas Haider, M.D., relating to his workers' compensation claim. The reports are dated February 24, 2010, August 31, 2010, September 7, 2010, June 28, 2011, August 14, 2012, December 19, 2012 and November 24, 2014. Mr. Reingrover also submitted two reports from Dr. Haider entitled "Physician's Report on Disability" for CalPERS relating to Mr. Reingrover's permanent disability claim. Those reports are dated September 1, 2010 and February 8, 2011. In his September 1, 2010 report, Dr. Haider opined that Mr. Reingrover was unable to work effective February 24, 2010. In his February 8, 2011 report, Dr. Haider opined that Mr. Reingrover was unable to perform the job duties of a correctional officer effective September 2, 2009, which he indicated was the end of Mr. Reingrover's "temporary disability." In addition, Mr. Reingrover submitted an October 13, 2011, surgical report relating to Mr. Reingrover's spinal surgery. These reports were received in accordance with the parties' stipulation.

In his reports, Dr. Haider diagnosed Mr. Reingrover with probable disc herniation, at the L4-5, with left lower extremity radiculopathy due to a cumulative and repetitive trauma injury that occurred between October 2005 and September 2, 2007, when Mr. Reingrover fell while working. Dr. Haider declared that Mr. Reingrover was permanently incapacitated to perform the usual and customary duties of a correctional officer and that he was unable to perform his job duties. Dr. Haider based his evaluation on a comprehensive review of Mr. Reingrover's medical records and reports, diagnostic testing, his examination of Mr. Reingrover, and the job requirements of a correctional officer.

DAVID S. KIM, M.D.

17. Mr. Reingrover submitted reports from David S. Kim, M.D., dated November 13, 2009, November 12, 2010, April 10, 2012, and October 10, 2012. Dr. Kim acted as an agreed medical evaluator for Mr. Reingrover workers' compensation claim. In accordance with the parties' stipulation, Dr. Kim's reports were received as evidence.

In his reports, Dr. Kim diagnosed Mr. Reingrover with lumbar spine sprain/strain, superimposed upon left-sided disc bulges at L4-5, with small left paracentral annular tear at L5-S1, and slight bilateral lateral recess stenosis, per an MRI dated November 13, 2009, with left lumbar radiculitis. After Mr. Reingrover's October 13, 2011, surgery, Dr. Kim updated his diagnosis to include the diagnosis status post anterior and posterior lumbar spine fusion with posterior pedicle screw instrumentation and local bone graft. Dr. Kim concluded that the cause of Mr. Reingrover's back condition was the cumulative and repetitive trauma of work as a correctional officer from October 31, 2005 through September 2, 2007. Dr. Kim noted that Mr. Reingrover would not be able to return to work as a correctional officer due to the side-effects of prescribed medications he was taking and considering his need to recover from spinal surgery.

MRI REPORTS

18. In addition to the medical reports, MRI studies dated June 9, 2011, by Neil Chafetz, M.D.; a study dated December 11, 2009, which was ordered by Gerald Goodow, M.D.; and a study dated August 25, 2008, which was ordered by Lauri Beth Helmsley, M.D., were received per the parties' stipulation. These studies document that Mr. Reingrover had a left paracentral broad-based bulge at L5-S1 with a small left paracentral annular tear. Drs. Halbridge, Haider, and Kim each cited these studies in their respective reports.

The Parties' Arguments Regarding Excusable Neglect

19. Mr. Reingrover was entitled to file his application for industrial disability retirement before his last payroll day on September 30, 2009. Mr. Reingrover did not file his application until September 13, 2010. Petitioner argued that, if it is determined that excusable neglect exists to explain Mr. Reingrover's failure to timely file his permanent disability application, Mr. Reingrover's application date should be corrected to December 9, 2009, when Dr. Goodlow stated that Mr. Reingrover's condition was "permanent." On this date, Mr. Reingrover's employer was aware that his condition was permanent and should have advised him of his right to apply for permanent disability retirement.

Mr. Reingrover argued that the correctable application date is September 2009, when Mr. Reingrover initially met Ms. Padilla and Ms. Padilla failed to advise him that he could apply for permanent disability retirement.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Absent a statutory presumption, an applicant for a disability retirement has the burden of proving by a preponderance of the evidence that he or she is entitled to it. (*Glover v. Board of Retirement* (1989) 214 Cal.App.3d 1327, 1332.)

Applicable Statutes

2. Government Code section 20026 provides in part:

“Disability” and “incapacity for performance of duty” as a basis of retirement, mean disability of permanent or extended and uncertain duration, as determined by the board . . . on the basis of competent medical opinion.

3. Government Code section 21151 provides in part:

(a) Any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, regardless of age or amount of service. . . .

4. Government Code section 21152 provides in pertinent part:

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

[¶] . . . [¶]

(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.

5. Under Government Code section 21153, an employer may not separate an employee who is disabled and otherwise eligible for disability retirement, “but shall apply for disability retirement of any member believed to be disabled, unless the member waives the right to retire for disability” and takes other steps listed in the statute.

6. Government Code section 21154 provides in part:

The application shall be made only (a) while the member is in state service . . . On receipt of an application for disability retirement of a 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. . . .

7. Government Code section 21156 provides in part:

(a)(1) If the medical examination and other available information show . . . that the member in the state service is incapacitated physically . . . for the performance of his . . . duties and is eligible to retire for disability, the board shall immediately retire him . . . for disability

(2) In determining whether a member is eligible to retire for disability, the board . . . shall make a determination on the basis of competent medical opinion

8. Government Code section 21166 provides in part:

If a member is entitled to a different disability retirement allowance according to whether the disability is industrial or nonindustrial and the member claims that the disability as found by the board . . . is industrial and the claim is disputed by the board . . . the Workers' Compensation Appeals Board, using the same procedure as in workers' compensation hearings, shall determine whether the disability is industrial.

The jurisdiction of the Workers' Compensation Appeals Board shall be limited solely to the issue of industrial causation

Applicable Statute Regarding Correcting an Error

9. Government Code section 20160 governs requests by CalPERS members or beneficiaries to correct an error. It provides:

(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.

10. Government Code section 20160, subdivision (a)(2), defines mistake, inadvertence, surprise, or excusable neglect consistent with Code of Civil Procedure section 473. Per Code of Civil Procedure section 473 not all mistakes or neglect will result in the granting of relief. Unless a petitioner “shows that he has exercised such reasonable diligence as a man of ordinary prudence usually bestows upon important business, his motion for relief under section 473 will be denied. . . . The law frowns upon setting aside default judgments resulting from inexcusable neglect” (*Davis v. Thayer* (1980) 113 Cal.App.3d 892, 907.) “Where the default occurred as a result of deliberate refusal to act, and relief is sought after a change of mind, the remedy is clearly inappropriate. (Citations.)” (*Davis, supra*, at 97 citing 5 Witkin, Cal. Procedure, s 144, Attack on Judgment in Trial Court, p. 3718.)

Appellate Authority

11. “Incapacitated” means the applicant for a disability retirement has a substantial inability to perform his usual duties. When an applicant can perform his customary duties, even though doing so may be difficult or painful, the employee is not incapacitated and does not qualify for a disability retirement. (*Mansperger v. Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 886-887.) Mere difficulty in performing certain tasks is not enough to support a finding of disability. (*Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854.)

Evaluation Regarding Permanent Disability Claim

12. Mr. Reingrover is incapacitated from the performance of duty due to a cumulative and repetitive trauma injury to his back that is of a permanent or extended duration. This disability rendered Mr. Reingrover incapable of performing the usual and customary duties of a correctional officer effective September 13, 2010, the date he filed his application for industrial disability retirement.

Mr. Reingrover credibly testified that he is substantially unable to perform his usual and customary duties as a result of his disability. (*Mansperger v. Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 876.) He is unable to wrestle or carry inmates out of a cell; he would not be able to wear a duty belt; he can’t push or pull cell doors because of pain; he can’t twist his body; and he would be unable to break up fights between inmates.

The conclusion that Mr. Reingrover is incapacitated from the performance of duty as a correctional officer is based on the competent medical opinion of Mr. Reingrover’s treating doctor, Thomas Haider, M.D. Dr. Haider concluded that Mr. Reingrover was permanently

disabled and unable to perform the jobs duties of a correctional officer, based on a comprehensive evaluation of Mr. Reingrover's condition and review of medical records and test results. Dr. Haider found that Mr. Reingrover had probable disc herniation at the L4-5 and L5-S1, and a probable annular tear at the L5-S1; and that this condition was the result of cumulative occupational trauma.

Dr. Haider's opinion regarding Mr. Reingrover's back condition and his permanent incapacity is supported by Dr. Kim, the Agreed Medical Examiner for Mr. Reingrover's workers' compensation claim, and Dr. Haldbridge, who examined Mr. Reingrover on behalf of CalPERS.

Evaluation Regarding Excusable Neglect or Mistake Claim to Reset Application Date

13. Mr. Reingrover did not meet his burden to establish his right to correct his application date under Government Code section 20160. In order for an application date to be reset under this statute, Mr. Reingrover needed to show that he failed to file his application for industrial disability retirement due to mistake, inadvertence, surprise, or excusable neglect consistent with Code of Civil Procedure section 473.

In December 2009, it was reasonable to believe that Mr. Reingrover was disabled because his doctor, Dr. Goodlow, informed Ms. Padilla, Mr. Reingrover's Return to Work Coordinator, that Mr. Reingrover's condition was "permanent." Because it was reasonable to believe that Mr. Reingrover was disabled at this time, Mr. Reingrover's employer had a ministerial duty to file the industrial disability retirement application under Government Code section 21153. (*Lazan v. County of Riverside* (2006) 140 Cal.App.4th 453, 460.) The failure to file Mr. Reingrover's application constitutes a mistake pursuant to Government Code section 20160. But, for this mistake to be correctable under Government Code section 20160 and Code of Civil Procedure section 473, Mr. Reingrover's decision to file his disability application on September 13, 2010 needed to be excusable.

Fundamentally, the relevant facts show that Mr. Reingrover chose to file his application on September 13, 2010, in order to treat with Dr. Haider and obtain medical evidence from Dr. Haider to support his application for industrial disability retirement. Mr. Reingrover's decision to proceed in this manner is not excusable consistent with Government Code section 20160 and Code of Civil Procedure section 473. (*Davis, supra*, at 97 citing 5 Witkin, Cal. Procedure, s 144, Attack on Judgment in Trial Court, p. 3718.)

First, in December 2009, Mr. Reingrover knew from Ms. Padilla that Dr. Goodlow, his treating doctor, stated in a letter he sent Ms. Padilla that Mr. Reingrover's back condition was "permanent." Mr. Reingrover, soon after he learned that Dr. Goodlow regarded his condition as permanent, sought counsel's help to apply for industrial disability retirement benefits, and he consulted with counsel before his temporary disability benefits expired in April 2010. During this time, Mr. Reingrover treated with Dr. Haider. Mr. Reingrover then delayed filing a disability retirement application because he wanted to collect medical information from Dr. Haider, although he was not required to submit this medical

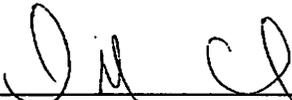
information with his application.¹ Also, Mr. Reingrover did not identify a specific retirement date in his September 13, 2010, industrial disability retirement application. He asked that his retirement become effective “upon expiration of benefits.”

ORDER

The application for industrial disability retirement filed by Eric S. Reingrover on September 13, 2010, with the California Public Employees Retirement System is granted.

The application by Eric Reingrover for an earlier effective date of disability retirement is denied.

DATED: January 8, 2015.



ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings

¹ Mr. Reingrover, when he applied for industrial disability retirement on September 13, 2010, stated that he would submit additional medical information.