

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

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

In the Matter of the Application for an Earlier  
Effective Date of Retirement of:

Case No. 2014-0755

SHANE R. MEE,

OAH No. 2015060856

Respondent,

and

CALIFORNIA DEPARTMENT OF  
TRANSPORTATION,

Respondent.

**PROPOSED DECISION**

This matter was heard before Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 25, 2016, in Sacramento, California.

Kevin M. Kreutz, Senior Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).<sup>1</sup>

Shane R. Mee (respondent) was present only during the early portion of the morning and afternoon sessions of the hearing. Respondent chose not to attend the remaining portions of the hearing. Respondent was represented at the hearing by his wife, Renee A. Mee (Ms. Mee) who was present throughout the hearing.

No appearance was made by or on behalf of the California Department of Transportation (Caltrans).

<sup>1</sup> At Mr. Kreutz's request, without objection from respondent, the Statement of Issues signed by Anthony Suine, Chief Benefits Services Division, acting solely in his official capacity, was amended by interlineation at hearing, as follows: page 1, line 23 was amended to replace the word "safety" with the word "miscellaneous," and line 24 was amended to replace "21151" with "21150."

CALIFORNIA PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM

FILED March 24, 2016

Shane Kreutz

Evidence was received, the record was closed, and the matter was submitted for decision on February 25, 2016.

## ISSUE

This appeal is limited to the issue of whether respondent made errors or omissions, which were the result of inadvertence, mistake, surprise or excusable neglect correctable by Government Code section 20160, which would have entitled him to an effective retirement date retroactive to January 1, 2007.

## FACTUAL FINDINGS

1. Respondent was employed by Caltrans as an equipment operator. Respondent's last day on the Caltrans payroll was December 31, 2006. Respondent resigned from Caltrans on January 25, 2007. By virtue of his employment, respondent was a miscellaneous member of CalPERS subject to Government Code section 21150.<sup>2</sup>

2. On November 2, 2006, respondent contacted CalPERS seeking an estimate for service retirement and disability retirement. On the same date, CalPERS sent a letter to respondent providing an estimate of disability retirement benefits, based on a retirement date of February 27, 2011, and a retirement age of 49 years.

3. On September 29, 2008, respondent contacted CalPERS seeking information about service retirement and disability retirement. A CalPERS employee reviewed a disability retirement application with respondent. On the same date, CalPERS sent a letter to respondent providing an estimate of disability retirement benefits based on a retirement date of December 31, 2008, and a retirement age of 46.75 years.

4. On March 29, 2012, respondent signed an application for service pending disability retirement, with a requested retirement date of March 1, 2012. Respondent was placed on the service retirement roll on April 5, 2012, with an effective retirement date of March 1, 2012.

5. On May 30, 2013, CalPERS approved respondent's application for disability retirement based on an orthopedic (back) condition. Respondent has been receiving disability retirement benefits since that date.

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<sup>2</sup> Government Code section 21150 provides: "Any member incapacitated for the performance of duty shall be retired for disability pursuant to this chapter if he or she is credited with five years of state service, regardless of age, unless the person has elected to become subject to Section 21076 or Section 21077."

6. On October 11, 2013, respondent sent a letter to CalPERS requesting that his disability retirement date be moved to January 1, 2007. Respondent stated in his letter that he thought he was eligible for disability retirement when he turned 50 years old.

7. On May 21, 2014, CalPERS sent a letter to respondent denying his request for an earlier disability retirement date. CalPERS's basis for denial was that the evidence did not establish that respondent had committed a correctable error due to excusable inadvertence, oversight, or mistake.<sup>3</sup>

8. On June 18, 2014, respondent sent a letter of appeal to CalPERS. In his letter, respondent summarized a series of events surrounding his application for disability retirement. In 2004, respondent suffered a back injury for which he was awarded Workers' Compensation benefits. During the years 2004 through 2006, respondent was in an employment dispute with his former employer Caltrans, which culminated in a decision by the State Personnel Board reversing the action to terminate his employment. During the employment dispute, respondent understood one of the human resources personnel at Caltrans to have told him he was required to withdraw all of his money from his retirement plan. Respondent called CalPERS in 2004, to see if this was true, and recalls that the person at CalPERS told him he should leave his money in his retirement plan so that he would have it for retirement at age 50 or 55. Respondent recalls that the person at CalPERS did not offer information that he was eligible at that time to submit an application for disability retirement. Respondent's impression was that he was not eligible to submit an application for CalPERS disability retirement before the age of 50, and that he would have applied sooner if he knew he was eligible to do so.

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. An applicant for retirement benefits has the burden of proving that he is entitled to it. (*Greator v. Board of Administration* (1979) 91 Cal.App.3d 54). In the absence of a statute to the contrary, the standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

### *Applicable Statutes*

2. Government Code section 21154 sets forth when a CalPERS member may file an application for disability retirement. In relevant part, it provides:

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

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<sup>3</sup> See Government Code section 20160, at Legal Conclusion 3, below.

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. . . .

3. Government Code section 21252, subdivision (a), sets forth the effective date of an application for retirement by a member who has ceased to be employed in state service, as follows:

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 member's application is received . . . .**

(Bolding added.)

4. Government Code section 20160 governs a request by a member or beneficiary to correct an error. 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.

[¶] ... [¶]

(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).

[¶] ... [¶]

### *Discussion*

5. Respondent discontinued his employment with Caltrans when he resigned on January 25, 2007. (Factual Finding 1.) Respondent submitted his application for disability retirement on March 29, 2012. (Factual Finding 4.) Because respondent submitted his application more than nine months after he discontinued his employment, the effective date for his retirement is March 1, 2012, which is the first day of the month in which he submitted his application. This date is prescribed by Government Code section 21252, subdivision (a), which is quoted in relevant part at Legal Conclusion 2, above.

6. Respondent contends that the effective date of his retirement should be back-dated to take effect in 2007, when he discontinued his employment. He had been under the impression he was not eligible for CalPERS retirement benefits before the age of 50. (Factual Findings 6 and 8.) Respondent further contends that he would have applied for CalPERS disability retirement much sooner had he known he was eligible to do so. (Factual Finding 8.)

7. Respondent was mistaken in his belief that he was not eligible to apply for CalPERS disability retirement before the age of 50. The issue here is whether respondent's mistaken belief was excusable, or whether respondent failed to make inquiry that a reasonable person would have made under similar circumstances. (Legal Conclusion 3, quoting Government Code section 20160, subdivision (a).)

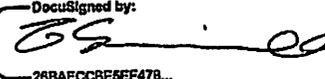
8. Respondent did not inquire as a reasonable person would have done under similar circumstances based on the information he had already obtained and the information available to him. Specifically, in 2006 and 2008, respondent obtained two separate disability retirement estimates from CalPERS, both of which assumed retirement ages younger than age of 50. (Factual Findings 2 and 3.) A reasonable person wanting to retire before the age of 50 would have followed up on those estimates. For this reason, respondent failed to present evidence establishing the right to correction of his error. (Government Code section 20160, subdivision (d).) Similarly, respondent failed to prove by a preponderance of evidence that he is entitled to have the effective date of his disability retirement back-dated to January 1, 2007.

### ORDER

Respondent Shane R. Mee's application for an earlier effective date of disability retirement is denied.

DATED: March 22, 2016

DocuSigned by:



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TIMOTHY J. ASPINWALL  
Administrative Law Judge  
Office of Administrative Hearings