

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
an Earlier Effective Date of Retirement of:

BRANDI L. DOMINGUEZ,

Respondent,

and,

CALIFORNIA STATE PRISON-
SACRAMENTO, CALIFORNIA
DEPARTMENT OF CORRECTIONS AND
REHABILITATION,

Respondent.

Case No. 2015-1003

OAH No. 2016010055

PROPOSED DECISION

This matter was heard before Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 21, 2016, in Sacramento, California.

Rory J. Coffey, Senior Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Brandi L. Dominguez (respondent) did not appear and no one appeared on her behalf. At the hearing, CalPERS established that respondent was properly served with the Statement of Issues and Notice of Hearing.

No appearance was made by or on behalf of respondent California State Prison-Sacramento, 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.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED July 1, 2016
J.C. Coffey

This matter proceeded as a default against respondent and CDCR under Government Code section 11520.¹

Evidence was received, the record was closed, and the matter was submitted for decision on July 21, 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 section 20160, which would have entitled her to an effective retirement date retroactive to May 1, 2012.

FACTUAL FINDINGS

1. Respondent was employed by CDCR as an Office Technician (Typing). By virtue of her employment, respondent was a state industrial member of CalPERS subject to sections 20048 and 21150. Respondent had the minimum service credit necessary to qualify for retirement. Respondent's last day of work was May 1, 2013.

2. On January 6, 2011, respondent contacted CalPERS and requested information on disability retirement. She was advised of the disability processing time, and was sent a disability retirement estimate and an application.

3. On July 16, 2012, respondent contacted CalPERS with questions on disability retirement, paperwork, and other things. Respondent was sent a disability retirement estimate and an application.

4. On November 23, 2012, respondent contacted CalPERS regarding the status of disability processing and informed CalPERS that she would be sending a disability retirement application. On December 16, 2013, CalPERS received respondent's industrial disability retirement application.

5. On December 18, 2013, CalPERS rejected respondent's application for industrial disability retirement because the last page was missing. There were no signatures of respondent, her spouse and a CalPERS/notary witness.

6. On January 8, 2014, someone contacted CalPERS checking on the status of respondent's industrial disability retirement, and was informed that the application was rejected due to the missing signature page.

¹ All further statutory references are to the Government Code unless otherwise specified.

7. On May 6, 2014, CalPERS noted that respondent did not get the rejection letter dated December 18, 2013. CalPERS advised respondent to resubmit all the forms and her industrial disability retirement application.

8. On June 9, 2014, respondent filed a "Disability Retirement Election Application" dated June 2, 2014, for industrial disability retirement requesting an earlier disability retirement date of May 1, 2012. In her application, respondent stated that her specific disability was, "Thoracic Outlet Syndrome (bilateral) Nuero [sic] vascular."

9. CalPERS requested medical reports and information concerning respondent's medical condition and late filing of the industrial disability retirement application to determine if she made a mistake in not filing for disability retirement at or near the time she separated from employment.

10. On February 6, 2015, CalPERS notified respondent that her application for industrial disability retirement had been approved effective June 1, 2014, based on orthopedic and neurological (bilateral upper extremities) conditions.

11. In a separate letter dated February 6, 2015, CalPERS wrote respondent informing her that her request for an earlier effective retirement date of May 1, 2012, was denied, on the basis that she was aware of her right to file for disability retirement as early as January 6, 2011, when she contacted CalPERS requesting information on disability retirement. Further, respondent was advised by her employer regarding her options in April and October 2012, but did not apply for disability retirement until June 9, 2014. In addition, respondent had knowledge of the application process, and did not establish that a correctable mistake was made within the meaning of Government Code section 20160.

Respondent's Evidence

12. In her appeal letter dated March 1, 2015, respondent explained that in 2012, she requested a disability retirement packet from CalPERS to "look over" and to begin the process of applying for industrial disability retirement. She further explained:

Several months later, after all of the paperwork from myself, employer, doctors and adjuster were submitted, I was advised that a page from the packet I sent in was misplaced/lost. Unfortunately, I had to start the application process over and resubmit the application. I was informed by the CalPERS specialist whom I was speaking to at the time, that this was not my fault and would be noted in my file.

Respondent requested that her application be "backdated and corrected as initially stated in my original application that was unfortunately mishandled."

13. Respondent did not appear at hearing, and therefore did not provide testimony or other evidence regarding an error made as a result of mistake, inadvertence, surprise or excusable neglect. No other persons testified or wrote in support of respondent's appeal.

Discussion

14. Respondent's injury occurred in 2009. Respondent waited until December 16, 2013, to submit her industrial disability retirement application, which was incomplete, and subsequently rejected by CalPERS. Respondent did not re-submit her application until June 9, 2014. Respondent's claim that her initial application was not processed because it was misplaced or lost by CalPERS was not established by the evidence presented at hearing. The evidence established that respondent submitted an incomplete application due to a missing signature page. The evidence did not establish that respondent is entitled to a retroactive industrial disability retirement date of May 1, 2012, due to an error or omission that was the result of mistake, inadvertence, surprise or excusable neglect pursuant to section 20160.

LEGAL CONCLUSIONS

Applicable Statutes

1. Section 20160 provides criteria for corrections of errors or omissions of CalPERS members. Subdivision (a) provides that CalPERS may correct errors or omissions of its members if *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.

2. Section 21252, subdivision (a) provides, in pertinent part:

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 at an office of the board or by an employee of this system designated by the board.

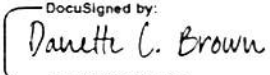
Analysis

3. Respondent stopped working in state service on May 1, 2013. She filed her first application on December 16, 2013, which was rejected due to a missing signature page. She then filed another application on June 2, 2014, more than nine months after she discontinued state service. Pursuant to section 21252, subdivision (a), the effective date of her application was the first day of the month in which her application was received, which was June 1, 2014. To qualify for an earlier retirement date of May 1, 2013, respondent had the burden to present documentation or other evidence establishing the right to correction pursuant to section 20160. As set forth in Findings 12 to 14, respondent did not demonstrate that her failure to timely file her disability application was the result of mistake, inadvertence, surprise, or excusable neglect correctable by section 20160, entitling her to an earlier effective retirement date. Her appeal of CalPERS' denial for an earlier effective date of retirement must, therefore, be denied.

ORDER

The appeal of CalPERS' denial of respondent's application for an earlier effective date of retirement filed by respondent Brandi L. Dominguez is DENIED.

DATED: July 28, 2015

DocuSigned by:

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DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings