

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Appeal of the Effective
Retirement Date by:

HANNAH M. CLAYBORN,

Respondent.

Case No. 2016-0496

OAH No. 2016090728

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on February 7, 2017, in Oakland, California.

Cynthia A. Rodriguez, Senior Staff Attorney, represented Anthony Suine, Chief, Benefit Services Division, California Public Employees' Retirement System (CalPERS).

Respondent Hannah M. Clayborn represented herself.

The record closed on February 7, 2017.

ISSUE

Whether Respondent Hannah M. Clayborn made a mistake correctable under Government Code section 20160 so as to entitle her to an earlier effective service retirement date.

FACTUAL FINDINGS

1. Anthony Suine, Chief, Benefit Services Division, CalPERS, filed the Statement of Issues in his official capacity.
2. Hannah M. Clayborn (Respondent) is a state miscellaneous member of CalPERS.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

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Background

3. On February 2, 2013, Respondent separated from her employment with the Department of Parks and Recreation. At separation, she was age 59 and had accrued 15.341 years of service. She was eligible to apply for service retirement at that time, but did not.

4. On October 7, 2015, Respondent telephoned CalPERS and discussed her retirement options. She was provided with relevant information and was pleased with the service and attention she received from CalPERS staff on the call.

5. On October 13, 2015, Respondent signed an application for service retirement, and by letter that same date requested January 15, 2014 as her retroactive effective retirement date. She subsequently changed her request to February 3, 2013. In the letter Respondent stated the reasons for her request. She discussed the July 2012 Annual Member Statement and her employment history in 2010 and 2011. Respondent next stated that she did not receive information about the rate of accrual of her retirement account funds that would "indicate the benefits or disadvantages of delaying retirement." She complained that CalPERS did not provide a graph like the one she received from Social Security that showed benefit amounts based on age. She wrote that she "was left to assume that CalPERS was similar to social security and that each year I delayed would significantly increase benefits. . . ." She shared that she was diagnosed with advanced stage breast cancer in 2012 and her treatment diverted her attention from her CalPERS retirement. In addition, Respondent complained that she had no notice of the switch CalPERS made to online statements and about "the complete lack of easily comprehensible graphs. . . ."

6. Respondent was granted service retirement effective October 15, 2015, and has been receiving her retirement allowance since that date.

7. By letter dated November 4, 2015, CalPERS responded to Respondent's request for the February 3, 2013, effective date. The letter stated that CalPERS does

not inform our members when to retire, we only inform them of their eligibility to retire. This information was stated on your annual member statements. We also mailed you a letter explaining your options upon separation from employment and to use the retirement calculator online if you would like to receive an estimate of your retirement allowance. Official retirement estimates are provided upon request when members are within a year of their anticipated retirement date.

CalPERS denied the request pursuant to Government Code section 21252, subdivision (a), which provides in pertinent part:

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 . . . 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 at an office of the board. . . .

CalPERS informed Respondent that because the above section requires the application be submitted no later than nine months following separation, it had no authority to grant her request.

Based on Respondent's application date of October 13 and Government Code section 21252, subdivision (a), her effective date should have been October 1, 2015. The record contains no explanation for this apparent error.

8. By letter dated November 11, 2015, Respondent requested reconsideration of her request based on her mistake of failing to apply sooner and negligence on the part of CalPERS. She reiterated that CalPERS failed to inform her in 2012 or thereafter that annual member statements would no longer be mailed, that it failed to inform her when she was eligible to retire, and that it "failed to give older and inactive members an important informative document entitled "Percentage of Final Compensation."

9. By letter dated February 2, 2016, CalPERS again denied the request, citing Government Code section 20160, subdivision (a). It provides that CalPERS:

may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member . . . provided that all of the following facts exist:

(1) The request . . . to correct the error or omission is made . . . within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discover 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 . . . 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.

CalPERS informed Respondent that it determined that section 20160 does not apply so as to excuse Respondent's late filing of her application by reason of mistake. It found that she failed to make the inquiry that a person similarly situated would have made. Respondent made no inquiry about retirement benefits until October 2015, more than two years after she left state employment. This was found not reasonable, preventing the application of section 20160.

10. Respondent timely appealed the CalPERS determination and this hearing followed.

Respondent's evidence and argument

11. At hearing and through written statements, Respondent continued to make the points she previously made in requesting a retroactive effective retirement date. Respondent continued to complain that she "was not notified personally by CalPERS" when she was eligible to apply for retirement and that CalPERS had discontinued mailing Annual Member Statements. Respondent presented a graph at hearing entitled "Percentage of Final Compensation 2% at 55," a CalPERS publication that she asserts she should have been provided previously and that "could have been included with every Annual Member Statement." In sum, Respondent argues that she should be granted a retroactive date because she was never personally informed of her "official eligibility to retire" and "not given the tools" throughout her membership "to disabuse" her about misconceptions she held about retirement.

Respondent is adamant that CalPERS did not provide effective service to her sufficient to meet her needs. She believes that CalPERS should provide personal and direct information to all members who are eligible to retire, including the tools necessary to disabuse members of any misunderstandings they may hold. Respondent believed that CalPERS operated similarly to Social Security, under which benefit amounts increase the longer that the member waits before applying. Respondent presented no reason why she should have believed this was the case; just that she did believe it and that it was CalPERS's responsibility to correct this incorrect belief. She is very critical in general of the information CalPERS provides its members and believes CalPERS could do a better job communicating.

12. Despite these complaints, there is no doubt that Respondent was aware that she could request assistance from CalPERS staff in matters related to her retirement account. In 2005, Respondent attempted to purchase additional service credit, and was assisted by CalPERS's Member Services Division. During the process, Respondent submitted a check to CalPERS for the purchase without an application. She was advised that an application

needed to accompany the check, among other paperwork. Respondent did not complete the transaction, and testified that this “was indicative of the problems” she has had when dealing with CalPERS. She said that she did her best and filled out every form, but “gave up” for reasons unclear. This was, of course, her choice.

13. Respondent’s evidence and argument were not persuasive. A reasonable person in Respondent’s circumstances would read the information sent by CalPERS. In Respondent’s case, this information included annual statements sent by mail through July 2012. On her July 2012 statement, which is in the format sent to members who are eligible to retire, it states on page two “You will be eligible for a monthly retirement benefit after you separate from all CalPERS covered employment. Please visit our Web site or call our toll-free number for additional information.” Respondent also was sent by mail the CalPERS quarterly magazine entitled PERSpective, which contains information about membership and retirement options. Throughout, it invites members to contact CalPERS for more information and to join online and in-person classes to learn about retirement basics and other relevant topics. The spring 2013 issue contains the notice that the Annual Member Statements would no longer be mailed, but that members may opt in to continue receiving a paper copy or view their statements online. Relevant information to assist Respondent to make retirement decisions was always available to her, but she decided not to avail herself of this assistance until more than two years after she was eligible to retire for service.

LEGAL CONCLUSIONS

1. The burden of proof in this appeal rests with Respondent. The standard of proof is preponderance of the evidence, which was applied in making the Factual Findings.

2. CalPERS provides retirement benefits to public employees in California pursuant to the Public Employees’ Retirement Law (PERL). (Gov. Code, § 20000 et seq.)

3. Pursuant to Government Code section 21252, “the effective date of a written application for retirement submitted . . . 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.” (Emphasis added.) As set forth in Finding 5, Respondent applied October 13, 2015; hence, her effective date should have been October 1, 2015.

4. As set forth in Findings 11 through 13, Respondent has not demonstrated that she is entitled to relief pursuant to Government Code section 20160, subdivision (a).


The evidence showed that CalPERS communicates with its members and offers information such as an online benefit amount calculator, training sessions, appointments, and staff to discuss problems on the telephone. Respondent was aware that she could contact CalPERS for help. She did so in 2005 and in 2015. It is unfortunate that Respondent was mistaken about her benefits and that she suffered through cancer treatments. But she did not present sufficient evidence so as to entitle her to a retroactive effective retirement date. A

reasonable person in Respondent's situation would have availed herself of help to apply for service retirement much earlier than Respondent did. Her failure to make such inquiry is not a correctable mistake under the statute. Accordingly, her request to change her effective retirement date to February 3, 2013, will be denied.

ORDER

1. The appeal of Respondent Hannah M. Clayborn is denied.
2. The effective date of Respondent Hannah M. Clayborn's CalPERS service retirement shall be changed to October 1, 2015.

DATED: February 21, 2017

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MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings